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[1] A: Yes.
[2] Q: Then my question was: Are you aware or do
[3] you know if the Commission has public notices which
[4] announce when the application itself has been
[5] granted?
[6] A: If it is, I'm not aware of that.
[7] Q: Were there times, ever, where anybody at
[8] Pepper & Corazzini would inform you that an
[9] application had been granted?
[10] A: Pepper & Corazzini, they would just send
[11] the grant of the applications. I don't know what
[12] you mean by that. They would basically--what my
[13] experience with Pepper & Corazzini was that they
[14] would file the application and I would at some
[15] point get the copy of the applications which they
[16] sent out. I didn't receive any application which
[17] has a stamp on it, says this application been
[18] accepted or later be granted.
[19] My understanding always was we proceed
[20] with the STA application. Whether we be authorized
[21] to install under that authorization, temporary
[22] authorization until we get the license, the next

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[1] thing to me was we file it, and then you filed the
[2] authorization, you get an okay, and then you get
[3] the license. When I got the license, that was the
[4] final document. Before that, my understanding was
[5] that you're under that temporary authorization to
[6] operate.
[7] Q: In your previous jobs before Liberty, did
[8] you have any experience with STA requests?
[9] A: No. The only thing I heard about it is
[10] previously I was told by our counsel there is some
[11] called Temporary Fix Authority, TFA. And if it was
[12] needed, that counsel would probably go with that.
[13] And at some point I was told that's a
[14] 24-hour turnaround, and I knew that he would have
[15] called around to users to make sure there is no
[16] technical--or if anybody has objections, then he
[17] would probably have applied for the TFA.
[18] So the STA is a term that I heard since I
[19] joined this company.
[20] Q: What was your understanding of why an STA
[21] would be necessary in the '94 to '95 time period?
[22] A: Part of it was that my understanding was

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[1] that the FCC is delaying to provide the licenses.
[2] Q: I'm sorry?
[3] A: FCC is delaying to provide the licenses,
[4] the Bureau. There is workload or some point I
[5] was--I understood they are trying to consolidate
[6] those individual applications which proven to be
[7] true, because when I got licenses, consolidated
[8] licenses, because under '91, '92, licenses, I saw
[9] that there were a lot of paperwork, individual
[10] licenses were all for everybody building. They're
[11] about this thick.
[12] And, for example, since in the system we
[13] are using the 72 channels, they would write up all
[14] those 72 channels. On the '94, all that paperwork
[15] is consolidated into one page, just the yellow page
[16] that we now get.
[17] So I was told that the FCC is in the
[18] process of changing some of these, and with the
[19] work and everything they are not issuing licenses,
[20] so, therefore, we decided the fact we have to have
[21] a customer up, then we would go with the Special
[22] Temporary Authority. That's what started that.

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[1] Q: Was time the major factor, then, in
[2] deciding to apply for an STA?
[3] A: But again, that part of it--I assume it's
[4] yes, but I wouldn't decide on that. But the
[5] procedure was in such a way that we knew that we
[6] are not going to be, again the licenses, for the
[7] reason I stated before, that we need to have a
[8] customer up, and they're going to be a certain
[9] time.
[10] And going with the Comsearch process and
[11] the application to the FCC, and the contracts that
[12] we had, the building has to be going up. The
[13] business has to go up. So that was the way to go.
[14] Legally it was decided. I didn't decide it.
[15] Q: Did somebody at Liberty instruct Pepper &
[16] Corazzini to apply for STAs?
[17] A: If they did, I'm not aware of that.
[18] Q: Did there come a time where you learned
[19] that Liberty had been operating certain facilities
[20] without FCC authorization?
[21] A: Yes.
[22] Q: And at what point did you learn this?

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[1] A: About April 20, end of April '95.
[2] Q: How did you come to learn about this
[3] knowledge?
[4] A: If I remember, some of the information
[5] came from Time Warner of some of these buildings
[6] without authorization.
[7] Q: Was it somebody at Liberty that told you
[8] that they had heard it from Time Warner, or did you
[9] have direct contact with Time Warner?
[10] A: No. I just got--from what I recall, I got
[11] something was sent, the list of the buildings and
[12] they say they were. That's why I found out.
[13] Q: I guess what I'm asking more specifically
[14] is--I will try to be clear--did Time Warner send
[15] this information directly to you?
[16] A: No.
[17] Q: Did somebody at Liberty convey to you that
[18] Time Warner had brought up this information?
[19] A: I don't exactly remember who and how, but
[20] document came up to my office internally.
[21] Q: And what did you do at that time?
[22] A: I'm sorry?

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[1] Q: What did you do at that time?
[2] (Witness confers with counsel.)
[3] Q: What did you do?
[4] A: I after I found that, I was surprised and
[5] I called Pepper & Corazzini, called Michael
[6] Lehmkuhl, and asked him it, obviously, what is the
[7] story.
[8] Q: But you don't recall who at Liberty
[9] brought it to your attention?
[10] A: I don't recall, but I would say that most
[11] of the information they been sent because
[12] headquarters in 575 Madison, and I know it didn't
[13] come to my office, and I'm assuming--just came by
[14] the mail. It was FCC-related.
[15] Q: Do you know if it was a practice of Pepper
[16] & Corazzini to copy you in particular with
[17] pleadings filed relating to any of Liberty's
[18] applications?
[19] A: What do you mean by pleadings filed? I
[20] don't understand that.
[21] MR. BEGLEITER: I was afraid of that.
[22] MR. SPITZER: That answers your question.

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BY MR. WEBER:

[1] Q: As of today, you're aware that Time Warner
[2] has filed Petitions to Deny against various
[3] applications of Liberty; correct?
[4] A: Yes. I have some documents here that I
[5] reviewed, yes.
[6] Q: And by some documents here you reviewed,
[7] you mean reviewed for today's deposition?
[8] A: No, no, no. Could you repeat your
[9] question, because I need to answer that.
[10] Q: All right. Today you have the knowledge,
[11] or do you know as of today whether or not Time
[12] Warner has ever filed what's called a Petition to
[13] Deny against any of Liberty's applications?
[14] A: I know that today, yes.
[15] Q: And when did you learn that Time Warner
[16] had filed Petitions to Deny?
[17] A: When did Time Warner Petition to Deny
[18] what?
[19] Q: Any Liberty application.
[20] (Witness confers with counsel.)
[21] MR. BEGLEITER: From the question he's

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[1] asked me, it appears to me he doesn't understand
[2] what a Petition to Deny is. I don't mind if he
[3] repeats what he told me verbatim, but he doesn't
[4] understand that.
[5] MR. WEBER: Off the record for a minute.
[6] (Discussion off the record.)
[7] MR. WEBER: Bruce has gone to try to
[8] retrieve the document which we believed he has been
[9] referring to previously and we will show it to him.
[10] (Discussion off the record.)
[11] (Brief recess from 12:05 p.m. to 12:20
[12] p.m.)
[13] (Nourain Exhibit No. 1 was
[14] marked for identification.)
[15] MR. WEBER: For the record, I have shown
[16] the witness what has been marked as Nourain
[17] Exhibit 1. It's a multi-page document entitled
[18] "Reply to Opposition."
[19] BY MR. WEBER:
[20] Q: Mr. Nourain, first I ask you if you have
[21] ever seen this document before.
[22] MR. BEGLEITER: The whole document or

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[1] parts of the document?
[2] BY MR. WEBER:
[3] Q: The document in its entirety. If you seen
[4] anything in its entirety like this.
[5] And I would like to you maybe specifically
[6] look at page seven of the document which is in the
[7] upper center of the page--they're numbered--and
[8] look at the second paragraph there. I want to ask
[9] you--the second paragraph on page seven.
[10] A: This paragraph?
[11] Q: Yes. I want you to tell me if this is
[12] what you were referring to earlier when you said
[13] that you believed it was Time Warner that brought
[14] it to Liberty's attention that there were
[15] unauthorized paths, if you know.
[16] MR. BEGLEITER: I object to the question.
[17] To whose attention? To Liberty's attention?
[18] MR. WEBER: To your attention.
[19] MR. BEGLEITER: I will accept your
[20] characterization is better than mine.
[21] MR. BECKNER: You withdraw your objection?
[22] MR. BEGLEITER: I withdraw it. He

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[1] testified he didn't hear it directly from Time
[2] Warner.
[3] THE WITNESS: To answer the first
[4] question, I don't recall.
[5] BY MR. WEBER:
[6] Q: That you have ever seen this before?
[7] A: Right.
[8] The answer to the second question, I don't
[9] recall I have seen this document at all.
[10] Q: The table that's attached as Attachment 1,
[11] which is several pages long, does that look
[12] familiar to you?
[13] MR. BEGLEITER: I will note for the record
[14] that the pages we are looking at does not
[15] specifically say Attachment 1. If you are
[16] referring to the page that is after Attachment 1
[17] that looks like a typewritten sheet, you could
[18] answer that question.
[19] THE WITNESS: I don't remember if I seen
[20] it, no. I don't recall if I have seen this. I
[21] don't recall anything about this document.
[22] BY MR. WEBER:

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[1] Q: Okay. Can you recall if Pepper &
[2] Corazzini made it a practice to send you any type
[3] of legal documents such as this one if they had
[4] been filed in relation to Liberty's applications?
[5] A: I don't understand the question.
[6] Q: Do you understand this to be a legal
[7] document or a legal pleading? When I--
[8] A: I haven't really read it, so I would have
[9] to read it. As I said, this doesn't look familiar
[10] to me.
[11] Q: Can you recall whether Pepper & Corazzini
[12] regularly sent you documents which had captions
[13] such as what's at the top of this document on top
[14] of Nourain 1 where it says "Before the Federal
[15] Commission Federal Communications Commission," and
[16] below that "in re: Applications of Liberty Cable
[17] Company, Inc."?
[18] A: Well, I don't recall that.
[19] MR. BEGLEITER: He's pointing to "Before
[20] the Federal Communications Commission."
[21] THE WITNESS: But I recall there are some
[22] documents that come with file numbers like that,

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[1] which my understanding is it could be some of those
[2] STA was filed or anything. I see a lot of
[3] documentation from FCC has these things related to
[4] the file numbers, but I don't remember anything,
[5] something like that.
[6] MR. BEGLEITER: Pointing to Nourain 1.
[7] BY MR. WEBER:
[8] Q: Now, you were referring to when you said
[9] you became aware that certain paths were operated
[10] without prior authorization.
[11] Was it an internal document, a document
[12] created within Liberty, that brought this to your
[13] knowledge?
[14] A: I don't recall the document itself, nor do
[15] I recall the path. They were referred in the
[16] document, so I know they were path. Some addresses
[17] was in there.
[18] Q: What were those addresses?
[19] A: I think the addresses are some of the ones
[20] that I have seen in the 15 addresses that it is in
[21] that--
[22] MR. BEGLEITER: He's pointing to the HDO,

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[1] which he's seen a copy.
[2] THE WITNESS: That copy that I read.
[3] BY MR. WEBER:
[4] Q: So when you first learned of unauthorized
[5] paths, you learned of several, more than one;
[6] correct?
[7] A: I heard-read about several, more than
[8] one.
[9] Q: Now, you stated that you called Pepper &
[10] Corazzini after learning this information.
[11] What else, if anything, did you do upon
[12] learning there were unauthorized paths?
[13] A: After I called, the reason I called, I
[14] wanted to find out about what is the cause that,
[15] and after that we stopped turning on any systems at
[16] that point. Everything stopped.
[17] Q: You stated it was Mike Lehmkuhl at Pepper
[18] & Corazzini that you spoke to?
[19] A: That's correct.
[20] Q: To your knowledge, was Mr. Lehmkuhl
[21] already aware that there were unauthorized paths?
[22] MR. BEGLEITER: Hold on one second,

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[1] please.
[2] (Counsel conferring.)
[3] MR. BEGLEITER: We will let him answer it,
[4] if he can. We are asserting the attorney/client
[5] privilege.
[6] (Whereupon, the Court Reporter read back
[7] the previous question.)
[8] THE WITNESS: We never talked about that,
[9] about-I would say no. I don't remember that it
[10] was or it wasn't.
[11] BY MR. WEBER:
[12] Q: You just said you never talked about that.
[13] Was not the purpose of the call to get to
[14] learn from Pepper & Corazzini why there were
[15] unauthorized paths?
[16] A: That's correct, but that wasn't the
[17] question you asked.
[18] Q: I understand. Based on your conversation,
[19] did you get the impression that Mr. Lehmkuhl was
[20] already aware that there was this problem of
[21] unauthorized paths?
[22] A: Yes.

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[1] Let me go back. He knew it at the time.
[2] Q: Thank you.
[3] You stated that one other thing you did
[4] upon learning of this problem is you stopped
[5] turning on new systems.
[6] Were you instructed to do this?
[7] A: I wouldn't call it instructed. I just
[8] knew that after my discussion with Mike Lehmkuhl,
[9] that what's been happened, and you're not supposed
[10] to turn anything on. At that point there is no
[11] instruction. For turning the system on, I don't
[12] need instruction, just authorization. After
[13] discussion, we had to stop turning any system on.
[14] MR. WEBER: We are at a breaking point
[15] now.
[16] (Whereupon, at 12:35 p.m., the deposition
[17] was adjourned until 2:14 p.m., the same day.)
[18]
[19]
[20]
[21]
[22]

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AFTERNOON SESSION

Whereupon,

[1] BEHROOZ NOURAIN
[2]
[3] was called for further examination by counsel for
[4] Federal Communications Commission and, having been
[5] previously duly sworn, was further examined and
[6] testified as follows:

FURTHER EXAMINATION BY COUNSEL FOR THE
FEDERAL COMMUNICATIONS COMMISSION
BY MR. WEBER:

[1] Q: I'm going to show you again what has been
[2] marked as Lehmkuhl Exhibit 1. And you have
[3] identified this as being an application, an FCC
[4] application. I would like you to notice at the top
[5] third of the first page there it says stamped, it
[6] says "received wireless." Do you see that stamp?
[7] A: Yes, I see that.
[8] Q: Did you receive copies of applications
[9] from Pepper & Corazzini bearing any similar type of
[10] stamp that you can recall.
[11] MR. BEGLEITER: The witness needs the
[12] question explained to him.

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BY MR. WEBER:

[1] Q: It only pertains to what's on the first
[2] page, this question.
[3] A: I know that I received the one that did
[4] not have this stamp on it.
[5] Q: But you don't recall if you seen any that
[6] had that type of stamp on it?
[7] A: I don't remember at the moment.
[8] Q: I would like you to turn to the fourth
[9] page of this exhibit again, and that's the page
[10] that has your signature at the bottom. That is
[11] your signature at the bottom; correct?
[12] A: That is correct.
[13] Q: Is there any way you can tell if this is
[14] one of the applications that you had signed prior
[15] to being filled out when the application was still
[16] blank? Is there any way you could tell that?
[17] A: No.
[18] Q: Did Mr. Lehmkuhl ever send you completed
[19] applications for you to review and sign?
[20] A: Not that I recall.
[21] Q: It is your understanding, then, that all

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[1] of the applications Mr. Lehmkuhl filed for Liberty
[2] that bore your signature you signed in advance?
[3] A: Yes.
[4] Q: Did there ever come to your attention that
[5] any applications filed on behalf of Liberty were
[6] filed after the system was already in operation?
[7] A: Would you repeat the question, please?
[8] Q: Earlier today we discussed there were
[9] instances where the system was turned on prior to
[10] receiving an authorization-correct?-and you said
[11] you're aware of that. There were times where
[12] Liberty began operating a facility without
[13] authorization; correct?
[14] A: No, I never said that. What I said was
[15] that there were some buildings were turned on when
[16] we had the licenses in the past. That's one thing
[17] I mentioned. The other thing I mentioned is that
[18] it was my assumption was-I presume that after I
[19] send these signed form, that part of the
[20] application, that Pepper & Corazzini continued with
[21] the process and got the STA, and the STA was
[22] authorized and we turned it on. That was my

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[1] assumption.

[2] Q: I understand. I'm not talking about your
[3] assumption. We discussed earlier today that you
[4] did learn that there were times where the system
[5] was turned on without having authorizations;
[6] correct?

[7] A: We are talking about those systems that
[8] you were talking about on April, some of those
[9] buildings that you were talking about. That was
[10] the end of the discussion that we had. There were
[11] some buildings that you mentioned under April, that
[12] was the question raised to me, it was in April
[13] that--which I mentioned there were some buildings,
[14] number of buildings that I saw which wasn't. If
[15] that's the question for those particular buildings,
[16] you are right. Those are the buildings.

[17] Q: Now, the question going one step beyond
[18] that, did you ever learn that a building was turned
[19] on even before an application was filed?

[20] A: Not to my knowledge.

[21] Q: I would like you again to look at Lehmkuhl
[22] Exhibit 1. And the first page, you see it bears

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[1] the date of February 21, 1995?

[2] A: Yes.

[3] Q: Again on page four, if you notice, you
[4] signed it on February 21st, 1995? By this, is it
[5] your understanding that this application would have
[6] been filed on February 21st, 1995?

[7] A: No. I signed the forms well prior to
[8] that. I never put the dates. The date was typed
[9] by--

[10] Q: By somebody at Pepper & Corazzini?

[11] A: Whoever did the filing. I never put the
[12] date there.

[13] Q: By the letter, the cover letter for this
[14] application on page one being dated February 21st,
[15] 1995, is it your understanding that that would mean
[16] that this application was filed with the FCC on
[17] February 21st, 1995?

[18] A: Now that I look at it.

[19] MR. BEGLEITER: Mr. Weber, I really
[20] believe the witness may have misunderstood the
[21] question that you asked.

[22] BY MR. WEBER:

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[1] Q: That's fine. But do we have it clear now?
[2] Do you believe that this application was filed on
[3] February 21st, 1995?

[4] A: That's what it says.

[5] Q: And can you tell me where in this
[6] application it shows what path it is applying for,
[7] what new facility this application is applying for?

[8] A: It says Normandie Court.

[9] Q: Actually, it's an amendment to that
[10] application, is it not?

[11] A: Yeah, it says amendment. It says
[12] amendment, yes.

[13] Q: If you look at the page right after the
[14] page you have signed which, in your copy, is
[15] numbered page five where it refers to Attachment 1,
[16] Path A?

[17] A: Yes.

[18] Q: Does that list a receiver site location?

[19] A: Yeah. It says receiver site named 441
[20] East 92nd.

[21] Q: Do you have any recollection right now
[22] what date 441 East 92nd Street became operational?

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[1] It's not in the application.

[2] A: I don't right now remember.

[3] Q: I'm going to show you what's been
[4] previously marked as Foy Exhibit 32, which is
[5] Appendix A and Appendix B from the Hearing
[6] Designation Order.

[7] (Document handed to the witness.)

[8] Q: If you look near the top of the first page
[9] there and see if you can see the address 441 East
[10] 92nd Street?

[11] A: Yes.

[12] Q: Do you see a date where Liberty began
[13] service?

[14] First I will ask, have you ever seen this
[15] document before? I believe you testified earlier
[16] you have seen--

[17] A: Yes, I have seen this document.

[18] Q: Did you ever do any type of independent
[19] verification to see if the information within this
[20] document is correct?

[21] A: No, I haven't.

[22] Q: Do you have any reason to believe that any

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[1] dates in this document are incorrect?

[2] A: I don't see any reason. I don't know of
[3] one.

[4] Q: Again at 441 East 92nd Street, do you see
[5] a listing for date Liberty began service?

[6] A: Yes.

[7] Q: And if I told you your counsel actually
[8] stipulated that it was the second of the two dates,
[9] 1/23/95--

[10] MR. SPITZER: Let me be clear. I presume

[11] you're referring to my conversation with
[12] Bruce--again, I'm not disputing the dates are
[13] essentially correct and we have every reason to
[14] think they're correct. I just only want to qualify
[15] the formal stipulation because there are several
[16] ambiguities where there are two dates to choose
[17] from and one or two mistakes in there, but we
[18] essentially agreed these dates are accurate.

[19] MR. WEBER: Thank you.

[20] BY MR. WEBER:

[21] Q: Obviously, you will agree with me that
[22] January 23rd, 1995, is before February 22nd,

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[1] February 21st, '95; correct?

[2] A: Obviously, that's correct.

[3] Q: Is this the first time that this has been
[4] pointed out to you that an application was filed
[5] after the system was already in operation?

[6] A: Going back to what I testified, I
[7] discussed before, where I cleared the frequency,
[8] all the paperwork was done by Pepper & Corazzini,
[9] and as soon as the Comsearch coordination was
[10] completed, they were to follow up and get the
[11] application as soon as possible, so I never saw
[12] those--the only thing I discussed with them was
[13] that with the Comsearch to get that thing moving.

[14] MR. BEGLEITER: He's asking a different
[15] question, Mr. Nourain. We have a problem here with
[16] tense. I don't want to give anything away, but
[17] there is a problem with tense.

[18] BY MR. WEBER:

[19] Q: Now, we have seemed to establish that the
[20] path requested in Lehmkuhl Exhibit 1 that this
[21] particular--what I have shown you as Lehmkuhl 1,
[22] that the path applied for in that application went

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[1] into operation prior to the application being
[2] filed; correct?
[3] A: The dates are different. One is February,
[4] one is January.
[5] Q: I had asked you earlier if you were ever
[6] aware of an instance where the system was in
[7] operation without even an application being on
[8] file, and you told me not that you know.
[9] Now I have shown you an instance, and I
[10] was trying to confirm that this is the first time
[11] you learned that, sitting here today. The first
[12] time you have been made aware of the fact.
[13] MR. SPITZER: Could we go back to that
[14] earlier question? Was it clear to the witness what
[15] time frame you were referring to in terms of his
[16] state of mind?
[17] MR. WEBER: We will make it clear.
[18] BY MR. WEBER:
[19] Q: Sitting here today, are you aware of any
[20] instance where facilities went into operation and
[21] there was not even an application on file?
[22] A: At the time, no.

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[1] Q: By "at the time, no," you mean at the time
[2] that it was turned on?
[3] A: No, no, no. What I'm saying is that-let
[4] me think one more time because I want to answer
[5] that clear.
[6] At no instances did I turn any system on
[7] without realizing that I was not authorized to turn
[8] the system on.
[9] Q: Okay. I understand that. I'm not talking
[10] about at the time you turned it on. I'm talking
[11] about what you know as of today.
[12] Do you know today that there were
[13] instances where a facility became operational
[14] without the application being on file? Do you
[15] understand my question now? I'm not talking about
[16] what your knowledge was at the time the facility
[17] became operational. What you learned later on.
[18] A: Well, later on means right now after
[19] during last year when we got everything together, I
[20] knew that those-the number of buildings, ten, 15,
[21] whatever it was in this list, I just see that based
[22] on appendix-

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[1] Q: Foy 4?
[2] A: Yes.
[3] And that was the turn on when I saw that-
[4] MR. BEGLEITER: I will ask.
[5] MR. WEBER: I will try it one other way.
[6] MR. BEGLEITER: I have an easier way of
[7] getting at it.
[8] MR. WEBER: I will let you pose one
[9] question, even though this is my deposition.
[10] MR. BEGLEITER: I really believe-I put a
[11] statement on the record we have a language problem
[12] here.
[13] Mr. Nourain, sometime last year did you
[14] learn there were certain buildings that Comsearch
[15] had not done a prior coordination for even though
[16] they had been requested?
[17] THE WITNESS: Some buildings here?
[18] MR. BEGLEITER: Yes.
[19] THE WITNESS: Yes.
[20] MR. BEGLEITER: And those buildings were
[21] activated without a license application?
[22] THE WITNESS: That's correct.

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[1] MR. BEGLEITER: There may be also another
[2] building that was activated without a license being
[3] applied for that you learned since last year?
[4] THE WITNESS: Yes.
[5] MR. BEGLEITER: Fine.
[6] THE WITNESS: Now I understand where we
[7] are going.
[8] MR. WEBER: Thank you, Bob.
[9] BY MR. WEBER:
[10] Q: You just stated that you did learn that
[11] there were certain buildings that Comsearch did not
[12] do its search on, and that they were activated
[13] without an application, licensed application being
[14] filed.
[15] What did you do upon learning that?
[16] A: By Comsearch did the search of, I had the
[17] coordination done-study was done by Comsearch and
[18] I reviewed that. If the statement says not done
[19] the search, means it did not go out in the 30 days,
[20] that's correct.
[21] But the first part of it, which was my
[22] information goes to Comsearch and Comsearch fill up

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[1] the-do their study and send it for review, that
[2] part of it was done. But as I found out later, it
[3] wasn't sent out.
[4] Q: I would like you to look at Foy
[5] Exhibit 32, the Appendix A, and about in the middle
[6] of the page you will see a listing for 430/440 East
[7] 56th Street.
[8] A: Yes.
[9] Q: You see where date service began it lists
[10] July 11th, 1994?
[11] A: Yes.
[12] Q: And the date the license was applied for
[13] is listed as July 17th, 1995?
[14] A: That's correct.
[15] Q: Is this one of the instances where you
[16] were just referring to?
[17] A: Yes.
[18] Q: Now, in July of 1994, prior to July 11th,
[19] 1994, had you requested Comsearch to do a frequency
[20] coordination, if you can recall?
[21] A: Yes.
[22] Q: I will have this marked as Nourain

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[1] Exhibit 2.
[2] (Nourain Exhibit No. 2 was
[3] marked for identification.)
[4] (Document handed to the witness.)
[5] Q: Do you recognize this as an application
[6] for a microwave path?
[7] A: That's correct.
[8] MR. WEBER: For the record, I state this
[9] is a multi-page document with the date July 17th,
[10] 1995, from the law offices of Pepper & Corazzini.
[11] BY MR. WEBER:
[12] Q: If you turn to what's called Attachment 1,
[13] Path C, in Nourain Exhibit 2.
[14] A: Yes.
[15] Q: And do you see a receiver site location?
[16] A: Yes.
[17] Q: And it's East 56th Street; correct?
[18] A: Correct.
[19] Q: Now, is there anywhere in here where you
[20] could tell when the Comsearch search was done?
[21] A: This particular one, yes.
[22] Q: It was done on 7/3/95?

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[1] A: Exhibit 2, Path C, page one of 12, it
 [2] tells you the date.
 [3] Q: Now, I believe you told me previously that
 [4] the path search would have been actually requested
 [5] in 1994?
 [6] A: That is correct.
 [7] Q: Could you tell me why this has a date of
 [8] July 1995?
 [9] A: Because the other one was clearly
 [10] coordinated by Comsearch at that time, but since
 [11] they never sent it out. Therefore, after the time
 [12] that coordinated and came to me and I reviewed
 [13] that, and I told them to send it to Pepper &
 [14] Corazzini, the copy go out for coordination, they
 [15] did not do that. There was some paperwork. It
 [16] never was done, but there was a coordination just
 [17] like this which dated '94 sometime in June, May,
 [18] April, whatever.
 [19] Q: To be sure I'm clear, are you saying then
 [20] they had to re-do it? Because they didn't send it
 [21] out in 1994, they had to re-do it in July of 1995?
 [22] A: Yes. After we find out those particular

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[1] paths that you referred on that Exhibit A, which
 [2] one of them is this 56, we never did that. So we
 [3] applied for it after we found out Comsearch didn't
 [4] do that, and it was overlooked by them.
 [5] Q: I would like you to turn to the third page
 [6] of this Nourain Exhibit 2 and tell me if that's
 [7] your signature at the bottom of the page.
 [8] A: That is correct.
 [9] Q: Again, is there any way you could tell
 [10] whether or not this is an application you signed
 [11] when it was blank, or did you review the
 [12] application in its entirety?
 [13] A: After end of April, which--
 [14] Q: April of which year?
 [15] A: April of '95, which we put a stop to
 [16] everything else. At that point on, I looked at
 [17] every application and I reviewed that. Although
 [18] this particular one seems like it was one of those
 [19] application which I already signed and send it to
 [20] them, but anything after April '95, I have reviewed
 [21] and looked at.
 [22] So this is July 17, '95, and I'm sure I

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[1] have reviewed that.
 [2] Q: It is your understanding, then, that you
 [3] would have reviewed this application on or about
 [4] July 17, 1995; is that correct?
 [5] A: Yes.
 [6] Q: On July 17th, 1995, were you aware that
 [7] the path at 430/440 East 56th Street was already in
 [8] operation?
 [9] A: As of July, yes.
 [10] Q: Can you tell me if there is anything in
 [11] this application that indicates that information to
 [12] the Commission?
 [13] A: Would you repeat the question?
 [14] Q: Informs the FCC that the path applied for
 [15] was already activated?
 [16] A: This application itself?
 [17] Q: Yes.
 [18] A: No, it does not.
 [19] Q: Did you ever take, yourself, any actions
 [20] to inform the FCC that the path applied for in this
 [21] application was already in operation?
 [22] A: To FCC?

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[1] Q: Yes.
 [2] A: No.
 [3] Q: I would like you to turn to the page that
 [4] you had signed, to page three which is the page
 [5] with your signature.
 [6] A: Yes.
 [7] Q: Can you see right below where it says
 [8] section four, certification, and there is a number
 [9] of little dots, have you read the certification
 [10] previously on an FCC application?
 [11] A: This?
 [12] Q: Yes. The information that follows the
 [13] little dots.
 [14] A: No.
 [15] Q: You have not read the certification
 [16] before?
 [17] A: (Witness shakes head.)
 [18] Q: When you signed a certification, did you
 [19] realize you were certifying that the information in
 [20] the application was correct?
 [21] A: Information on this application is
 [22] correct? Well, due the fact I signed this page and

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[1] sent it to them, this is the only page I had, I
 [2] signed it and sent it to them. So I don't
 [3] understand the question what you mean by that.
 [4] Q: I thought you told me you reviewed this
 [5] application in its entirety.
 [6] A: My review of the application was after the
 [7] event of the end of April which we stopped. My
 [8] main concern was to make sure the procedure put
 [9] together is correct and we are not turning any
 [10] system on without either the license or Special
 [11] Temporary Authority on that, the application
 [12] itself.
 [13] Again, it's the same, basically is nothing
 [14] the technical part of it applying for it. For this
 [15] particular buildings, I think at this point were
 [16] established that an error was made, I was told, on
 [17] those buildings. And we are trying to correct that
 [18] by applying for it. That was my understanding on
 [19] that that we found out, and then we just proceeded
 [20] to inform and clear the frequency again and make
 [21] sure the Comsearch understood they made an error,
 [22] and then proceed with that.

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[1] MR. WEBER: Could I have the Reporter read
 [2] back the last question.
 [3] (Whereupon, the Court Reporter read back
 [4] the previous question.)
 [5] BY MR. WEBER:
 [6] Q: To your knowledge or recollection, has
 [7] anybody ever explained to you the significance of
 [8] your signature on an application?
 [9] A: No. My only presumption was to make sure
 [10] all the technical part of it is correct. And since
 [11] we had a counsel in Washington to do the work, they
 [12] would fill it out and they would proceed with it.
 [13] Q: If you look shortly above where your name
 [14] is signed, there is a statement made in all capital
 [15] letters that willful false statements on this form
 [16] are punishable by fine and/or imprisonment.
 [17] Have you read that sentence in an
 [18] application previously?
 [19] A: I don't recall. This application I know I
 [20] just signed it and send it to them.
 [21] Q: Did you have discussions with anybody
 [22] whether or not--strike that.

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[1] We have established at the time this
[2] application was filed in July of 1995, you were
[3] aware that the path was already in operation;
[4] correct?
[5] A: Yes.
[6] Q: Did you discuss with anybody whether or
[7] not the FCC should be told what this application is
[8] applying for is already in operation?
[9] A: When I found out that these paths
[10] were--errors, clerical errors, I will call, it was
[11] never sent out, that was established, then I
[12] proceeded with recording it, that these are the--I
[13] recall some of those paths. And I proceeded with
[14] the--I talked with the Comsearch and went through
[15] the process. I found out they neglected to send
[16] those coordinates out, and I guess nothing was done
[17] about that.
[18] Then I brought it up to our supervisors,
[19] and then--
[20] Q: Who specifically?
[21] A: The form was put together which basically
[22] we went to check over all the paths, and then I

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[1] could not find any filing for those particular
[2] paths. Then I brought it up to the attention of
[3] Tony Ontiveros, which was my supervisor. And then
[4] at that point I proceeded with--these few facts
[5] that hasn't been worked on it and we didn't know
[6] about it, and was told to proceed with--do the
[7] coordination, and at that point I started doing
[8] this path coordination again.
[9] Q: I understand that. We have gotten to that
[10] point already, and we have gotten to the point
[11] where this application is being filed, that you
[12] have done the recoordination, gone to Comsearch,
[13] found there was a mistake, they did a new frequency
[14] coordination, and a new application has been
[15] prepared.
[16] Did you ever discuss with anybody whether
[17] or not the FCC should be told that the facility is
[18] already been turned on?
[19] A: If I recall, yes, at that point I think I
[20] mentioned that you have to tell them it was a
[21] mistake done by us. I didn't specifically--I think
[22] internally I spoke with them, their supervisors.

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[1] Q: So you believe you told Mr. Ontiveros
[2] this?
[3] A: Yes.
[4] Q: You believe you told Mr. Price this?
[5] A: Yes. It was in a meeting that I mentioned
[6] to them.
[7] Q: Can you recall their response?
[8] A: Their response at that point was to
[9] quickly record a path, and that's where I proceeded
[10] with.
[11] MR. BEGLEITER: You're not implying by
[12] this time that the FCC wasn't told?
[13] MR. WEBER: I may be implying that we
[14] weren't told in the application, yes.
[15] MR. SPITZER: Told by other means; right?
[16] MR. BECKNER: Are we going to have another
[17] one of these meetings?
[18] MR. SPITZER: What meetings?
[19] MR. BECKNER: We seem to find out every
[20] time an issue has been raised that the FCC hasn't
[21] been told something that there was a meeting.
[22] MR. BEGLEITER: You don't understand what

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[1] we are talking about, Mr. Beckner.
[2] MR. WEBER: We could move on.
[3] BY MR. WEBER:
[4] Q: Did you ever ask Comsearch why they didn't
[5] send out the initial frequency coordination?
[6] A: Yes, I asked them.
[7] Q: And what did they tell you?
[8] A: They told me that it just happened.
[9] And I also showed them about particularly
[10] on those I provide them with the purchase order for
[11] the every time they did the coordination, provide
[12] them a purchase order.
[13] And during the time that they were
[14] clearing the coordination and providing them a
[15] purchase order, also the first thing I did was go
[16] back and make sure I had given them the purchase
[17] order because my recollection was always reviewed
[18] the application, but at that point I checked out
[19] and find out the purchase order also.
[20] Q: Could you tell us what you mean by
[21] purchase order.
[22] A: Whenever you clear the application, asking

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[1] Comsearch to coordinate something, there is a
[2] charge involved in that, and write a purchase order
[3] against the work they were doing.
[4] When I found those files, I went back and
[5] looked at the purchase order file and find out that
[6] the purchase order at the time was issued to them.
[7] And then when I looked at them, when I talked to
[8] them, they said they investigate and came back
[9] later, they said they must have overlooked that
[10] because of the paperwork or something and would
[11] send it out.
[12] Q: Who specifically at Comsearch did you
[13] speak with?
[14] A: I think the person who did that
[15] coordination, I think, would be, as I said, a
[16] number of them. Young, some guy like that who I
[17] remember at the time. The reason I remember, I
[18] just knew the date and that was the guy who was
[19] doing the searching for us.
[20] Q: Now, during '94, you were in contact with
[21] Comsearch--correct?--to have them do frequency
[22] coordinations.

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[1] A: Whenever I needed them to.
[2] Q: Did they always send you a copy of their
[3] coordination as well as sending it to Pepper &
[4] Corazzini?
[5] A: Yes. They would send me to correct it,
[6] and after that correction I would tell them to send
[7] it to Pepper & Corazzini, yes.
[8] Q: I don't think I know what you mean by
[9] sending to correct it. I'm not talking about these
[10] paths where you found the mistakes.
[11] A: As I stated this morning, generally
[12] whenever the study was done, they would send it to
[13] me to make sure it's corrected, all the technical
[14] data, everything is corrected. All the information
[15] I gave them to clear the frequency is corrected
[16] before they send it out. That's what I meant by
[17] correction.
[18] Q: Did you keep any kind of internal records
[19] in your own office to be sure that you could follow
[20] up with them to be sure they did what you requested
[21] them to do?
[22] A: I will check the coordination they have

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[1] done, what I call PCN, and those were my copy. I
[2] kept that--that's the only copy I kept in my
[3] office, but that's just a technical information.
[4] Q: You got a step ahead of me, then. Did you
[5] keep any type of files showing you have requested
[6] them to do a frequency coordination so you could be
[7] sure they actually do send you the PCN?

[8] A: Yeah, the information that--yes. I had
[9] the data sheet completed. I had the form which I
[10] created for the information, and then I sent that
[11] to them, faxed it to them. When they coordinated
[12] that, they would send the coordination back, and
[13] that's the one I would have kept.

[14] And I have a file that has those
[15] coordination in there, the dates.

[16] Q: Then I would like to ask you, with what's
[17] been shown to you as Nourain Exhibit 2, we have
[18] discussed that this is for a path that was applied
[19] for in 1995, July of 1995, even though it went into
[20] operation in July of 1994.

[21] And if I understand your testimony
[22] correctly, you stated previously that you had

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[1] requested Comsearch to do the frequency
[2] coordination in 1994. However, they made a mistake
[3] and did not do it; is that correct?

[4] A: Partially correct.

[5] Q: What part is incorrect?

[6] A: By coordination, I mean that do the study
[7] and send it out, what they have done, they have
[8] done the first part which I see on this Exhibit 2,
[9] part C, what I call PCN. This coordination was
[10] done based on my data to them.

[11] Q: Was it done in 1994 or was it done in
[12] 1995?

[13] A: It was done in 1994 as well as 1995 for
[14] those paths that you are talking about. It was
[15] done in 1994 and faxed to me and I reviewed that.

[16] Q: They did fax you something in 1994?

[17] A: That's correct.

[18] Q: But they never sent it to Pepper &
[19] Corazzini, then, in 1994?

[20] A: Well, they were supposed to send--as part
[21] of that discussion procedure I had this morning,
[22] everything automatically was supposed to send to

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[1] Pepper & Corazzini at the time that they were ready
[2] to send it out to be studied. They found out later
[3] they never sent it out to be studied. As much, I
[4] think they must not have sent it to Pepper &
[5] Corazzini.

[6] Q: But they did send you a copy?

[7] A: Yes, because they would send to me for
[8] correction, yes, that's correct.

[9] MR. WEBER: I would like to inquire now
[10] whether that was produced.

[11] Off the record.

[12] (Discussion off the record.)

[13] MR. WEBER: Back on the record.

[14] I will state on the record we have indeed
[15] discovered that the frequency coordination for that
[16] path in 1994 was produced--I'm sorry--the invoices
[17] for that path frequency coordination.

[18] BY MR. WEBER:

[19] Q: I would like to inquire now about why it
[20] was the responsibility of Comsearch to send this
[21] information to Pepper & Corazzini.

[22] A: Just for expedited matter. It was

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[1] arrangement was made that, as I stated earlier,
[2] after everything is corrected, they should quickly
[3] send that, not only Comsearch to them, but always
[4] most of the time I instructed that Pepper &
[5] Corazzini to get that supplemental showing from
[6] them, and they were the one who gained that. That
[7] was a procedure we followed since 1992.

[8] And major concern that I had was that by
[9] the time I get it, and then I send it to them, so
[10] the arrangement was made to be done between the
[11] two, and to me that's a very normal thing to do
[12] because previously it was the same thing.
[13] Comsearch would send it to the counsel and I would
[14] not get involved too much in that after that. The
[15] study was done, so it proceeded the same.

[16] Q: I believe you testified earlier today that
[17] you also would call Pepper & Corazzini about the
[18] same time your having Comsearch do the frequency
[19] coordination to let them know that it may be
[20] coming.

[21] A: Yes. I testified that I said that often I
[22] did it. At the time I send it to Comsearch or

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[1] afterwards, yes.

[2] Q: And these instances where Comsearch
[3] apparently neglected to send the PCN to Pepper &
[4] Corazzini, do you know if you had spoken to anybody
[5] in Pepper & Corazzini about those paths?

[6] A: About these particular paths?

[7] Q: About any of the paths where Comsearch
[8] failed to send the information on to Pepper &
[9] Corazzini.

[10] A: At the time I didn't know about that. I
[11] only found out about those paths end of April.

[12] Q: Let's talk about this specific path, then.

[13] A: Yes. -

[14] Q: Do you recall if you had spoken to anybody
[15] at Pepper & Corazzini about this path, the 440 East
[16] 56th Street, in 1994, to tell them that you sent
[17] something to Comsearch?

[18] A: As a customary, not only for that path
[19] because every time I cleared some path, cleared
[20] some coordination with a number of paths, they were
[21] always aware of the path that it was going to the
[22] Comsearch.

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[1] So right now I would say yes, because
[2] that's the way I would just follow on every path.
[3] There was no exception.

[4] Q: Did Pepper & Corazzini ever come to you
[5] and state, you told us something has been sent to
[6] Comsearch but we haven't gotten it yet and trying
[7] to inquire what's up?

[8] A: I think that's something I presume they
[9] neglected to, no.

[10] MR. WEBER: I'm going to show the witness
[11] what has been previously marked as Price
[12] Exhibit 14.

[13] (Document handed to the witness.)

[14] BY MR. WEBER:

[15] Q: I ask you if you have seen this document
[16] previously.

[17] (Witness reviews document.)

[18] A: I see it now. What is the question?

[19] Q: Have you seen this document previously?

[20] A: I don't recall.

[21] Q: Do you see handwriting there in the lower
[22] half?

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[1] A: Yes.
[2] Q: Do you recognize that handwriting? Do you
[3] know if that's Ms. Ceccarelli's handwriting?
[4] A: No, definitely not.
[5] Q: Is that Foy's handwriting?
[6] A: I don't really recall that, honestly.
[7] Q: Can you recall Mr. Price telling you to
[8] move on the equipment for the Wales Hotel?
[9] A: I don't know.
[10] Q: Can you recall any instances where time
[11] was a major concern, you were told to move on
[12] getting equipment ready?
[13] A: Yes. Generally always time was in essence
[14] to get as much equipment because equipment is very
[15] big lead time. I try to get an inventory of
[16] equipment, yes.
[17] Q: When you were going to be constructing an
[18] antenna on top of a building, is it necessary to
[19] get work permits from the City of New York?
[20] MR. BEGLEITER: If you know.
[21] BY MR. WEBER:
[22] Q: If you know.

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[1] A: If it's necessary to get a work permit for
[2] installing the antennas on the roof?
[3] Q: Yes.
[4] A: I know we applied for it, but was it
[5] necessary to get it or-I don't know the legal part
[6] of it. Would that be considered what type of
[7] antenna? There are a lot of different antenna that
[8] go on the roof of a building. So I have never seen
[9] any New York document as far as that's concerned.
[10] Q: But you did just state that you have
[11] applied for New York work permits?
[12] A: There is a firm that we go to to apply for
[13] the work permits.
[14] Q: And who is responsible for doing that?
[15] A: For who is responsible?
[16] Q: For going to the firm to have them apply
[17] for the work permit.
[18] A: Part of it again is-as far as my part of
[19] it would be when we get the antennas, all the
[20] engineer designs the antenna, and we send that to
[21] the building management and the firm, and the forms
[22] have to be filed by the building management and it

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[1] goes to that particular firm to be applied for the
[2] permit.
[3] MR. WEBER: I would like to have this
[4] marked as Nourain Exhibit 3.
[5] (Nourain Exhibit No. 3 was
[6] marked for identification.)
[7] MR. WEBER: For the record, Nourain
[8] Exhibit 3 is a compilation of three exhibits
[9] bearing numbers 346, 345, and 403.
[10] BY MR. WEBER:
[11] Q: Have you seen any of these documents
[12] before, sir?
[13] A: Yes.
[14] Q: And it is your signature on each of the
[15] three?
[16] A: That's correct.
[17] Q: Could you tell us what these are for.
[18] A: These are the form that we-there is a
[19] form that needs to go to the building managers to
[20] fill up their information of the management owners
[21] of the building which will go and come back and be
[22] accompanied with antenna drawings, and then we

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[1] would send to the firm that I mentioned that was
[2] hired by Liberty to apply for the permit.
[3] Q: What is the name of this company you are
[4] referring to, the firm you are referring to?
[5] A: I know his last name is Vilkas, guy named
[6] Vilkas. He's a guy who does this work.
[7] Q: Can you tell me what a Certificate of
[8] Insurance is?
[9] A: Certificate of Insurance?
[10] Q: Yes.
[11] A: We get that sometimes for the installation
[12] of some buildings. Generally some buildings
[13] require that. That's the only thing I can
[14] remember, that sometimes is needed for the
[15] construction because we have other Liberty
[16] personnel or outside contractor that go do the work
[17] in the building and building requires a Certificate
[18] of Insurance occasionally.
[19] (Nourain Exhibit No. 4 was
[20] marked for identification.)
[21] MR. WEBER: I have shown the witness what
[22] has been marked as Nourain Exhibit 4. It's a

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[1] one-page memo with Bates stamp 1361.
[2] BY MR. WEBER:
[3] Q: Have you ever seen this document before,
[4] sir?
[5] A: Yes, sir, I have.
[6] Q: And this is a memo written by you on or
[7] about April 20th, 1994?
[8] A: That's correct.
[9] Q: Under number three where you have four
[10] things enumerated, it states "FCC path filing," and
[11] then you go, (reading) the paths have not been
[12] filed since I have not received a go-ahead for the
[13] project.
[14] A: That's correct.
[15] Q: Could you tell me what that means.
[16] A: It was a discussion of relocation of the
[17] our antennas from River Tower, and they wanted the
[18] cost estimate at that point which was provided,
[19] summarized. But generally, before I spent money on
[20] any project, I needed to get their authorization to
[21] do, and this was emphasized that although I have
[22] studied it and did some of the engineering work,

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[1] this needs authorization because it was unlike
[2] other projects that you already had a contract.
[3] You know that it was a done deal to go this one
[4] needed to be authorized before I could actually
[5] start spending money on the project. That
[6] statement means that these are the issues, and I
[7] have to get the go-ahead to start with the project.
[8] Q: Was that true for all new buildings, you
[9] had to get a go-ahead until you could start the FCC
[10] filing process?
[11] A: What do you mean by the new buildings?
[12] Q: Any facility, any microwave system you are
[13] going to put on top of a building.
[14] A: At the time that-I mentioned this morning
[15] when the Installation Progress Report will be
[16] coming to meetings, they will come back with a
[17] building which was signed or that would give me the
[18] go-ahead, or at some point they determined that we
[19] need to work on some of the building whether they
[20] were signed or not signed.
[21] So I would give that either verbally or
[22] with the memo, and then I would go ahead with that.

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(1) So it wasn't a really clear cut. I needed to be
(2) informed before I spent money and everybody else
(3) too.

(4) Q: Did you just state that you began work on
(5) certain buildings prior to there being a fully
(6) executed contract, if you understand what I mean by
(7) fully executed contract?

(8) MR. BEGLEITER: You have to define work.
(9) His testimony here-I don't want to interfere, but
(10) there was testimony that certain things happened
(11) before.

(12) BY MR. WEBER:

(13) Q: On the further thing enumerated in your
(14) memo in Nourain Exhibit 4, you state a total of 60
(15) days, including the waiting period for FCC filing,
(16) is required to complete this project. Can you
(17) explain to me what you mean by that?

(18) A: The question was asked how long it's going
(19) to take, and I looked at the time that I designed
(20) it. Comsearch goes through its press and get the
(21) filing at Pepper & Corazzini file it, and that
(22) would be-and the STA or whatever needs to be done

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(1) on it, it's estimated to be about 60 days.

(2) Q: Do you know what the waiting period for
(3) FCC filing is meant, what that means?

(4) MR. BEGLEITER: What he meant by it?

(5) MR. WEBER: Yes.

(6) THE WITNESS: Could you repeat the
(7) question?

(8) BY MR. WEBER:

(9) Q: You state that it's 60 days which includes
(10) the waiting period for FCC filing. I'm just asking
(11) you what you mean by the waiting period for FCC
(12) filing.

(13) A: To get the actual building filed and get
(14) authorization, whether it's under STA or FCC,
(15) provide you with a license to turn on, estimated.

(16) Q: So it means how long it will take until it
(17) gets granted?

(18) A: Well, I used elapsed time. The time it
(19) takes from lead to start and need authorization. I
(20) submit about 60 days.

(21) Q: So you do mean that within the 60 days the
(22) application can be filed, and it will be granted?

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(1) A: Well, that is just an approximation. How
(2) it's going to be done is referred to Pepper &
(3) Corazzini to do it.

(4) Q: And where did you come about the
(5) information to make your conclusion that it takes
(6) 60 days?

(7) MR. BEGLEITER: Objection. Form of the
(8) question.

(9) Answer it, if you can understand it.
(10) (No response.)

(11) BY MR. WEBER:

(12) Q: Okay. You told us that you have concluded
(13) that it takes 60 days for this process to happen.

(14) MR. BEGLEITER: Objection. I don't think
(15) he said that.

(16) THE WITNESS: I said that approximation is
(17) within that time period.

(18) BY MR. WEBER:

(19) Q: Takes approximately 60 days for this to
(20) occur, correct? Is that your conclusion that
(21) you're making in this memo? You stated first when
(22) I asked you about part four that you were asked how

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(1) long it takes for this process to occur, correct?

(2) A: Yes. My presumption was that it takes
(3) just about that time.

(4) Q: Why did you presume 60 days or
(5) approximately 60 days?

(6) A: 60 days? Because of the 30 days of
(7) Comsearch coordination and the rest after that
(8) would be the filing of application the same day,
(9) and just Special Temporary Authority be done the
(10) next day, would be a week or so after that.

(11) Presumption was that makes it 40 days, and takes
(12) ten days or five days or whatever for FCC to
(13) provide you with authority. That would be the 60
(14) days. That's what I thought of when I wrote that.

(15) Q: Are these numbers you just gained through
(16) experience, or were the numbers of the days it
(17) takes something somebody else had told you? Was it
(18) Pepper & Corazzini counsel that told you?

(19) A: Yes.

(20) MR. BEGLEITER: To the extent it calls for
(21) a confidential communication between attorney and
(22) client, I will instruct the witness not to answer.

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(1) MR. WEBER: If you can't answer-

(2) Read back the last question.

(3) (Whereupon, the Court Reporter read back
(4) the previous question.)

(5) THE WITNESS: It was something that I was
(6) told, this is the procedure.

(7) BY MR. WEBER:

(8) Q: Independent of Pepper & Corazzini, did you
(9) acquire any knowledge of how long this process
(10) takes?

(11) A: Not the filing part of it, the legal part
(12) of it.

(13) (Nourain-Exhibit No. 5 was
(14) marked for identification.)

(15) (Document handed to the witness.)

(16) MR. WEBER: This is a good time for us to
(17) take a break.

(18) (Brief recess.)

(19) (Telephone conference with Judge Sippel at
(20) 3:35 p.m.)

(21) MR. BECKNER: I should mention the
(22) witness, Mr. Nourain, is also in the room with us,

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(1) as well as our Court Reporter who is making a
(2) record of the proceedings.

(3) JUDGE SIPPEL: Okay. I hear you.

(4) MR. HOLT: This is Mr. Holt. I guess this
(5) call is placed at my request to discuss a matter
(6) that arose yesterday at the conclusion of
(7) Mr. Price's deposition.

(8) Mr. Price was deposed until
(9) approximately-well-precisely 7:45 yesterday. I
(10) began my questioning after Bureau counsel concluded
(11) their questioning around-I think concluded around
(12) 7:30. There was a discussion between myself and
(13) Mr. Spitzer regarding whether or not Mr. Price
(14) could stay later so I could conclude my
(15) questioning. Mr. Spitzer indicated that Mr. Price
(16) would not be staying past 7:45 because he had to
(17) catch an 8:30 flight, and I proceeded to question
(18) him for approximately eight minutes or so, and they
(19) terminated the deposition.

(20) Cablevision, of course, is an entirely
(21) separate party to this proceeding and has interests
(22) that it wants to pursue in questioning Mr. Price,

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[1] and for that reason, I thought it appropriate to
[2] contact you to move to compel Mr. Price's
[3] attendance at a second segment of the deposition in
[4] view of the fact that counsel terminated the
[5] deposition prematurely yesterday.

[6] JUDGE SIPPEL: What time did the
[7] deposition start?

[8] MR. SPITZER: 9 a.m. We were here. The
[9] first question was at about 9:30. I'm not sure
[10] when Mr. Holt arrived. I believe it was between
[11] 10:30 and 11.

[12] MR. HOLT: That's correct, Your Honor. I
[13] was not there when counsel for Time Warner began
[14] questioning Mr. Price.

[15] MR. SPITZER: Mr. Holt, have you
[16] concluded? If that is your application, I do wish
[17] to provide some background, Your Honor. The
[18] background is Mr. Price was here at 9:00. He
[19] answered questions continuously whenever they were
[20] posed. There were clearly some breaks over the
[21] course of the day, none of them attributable to our
[22] request. He sat here patiently, answered every

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[1] question. Mr. Beckner had questioned until 6:30 or
[2] so, I believe. Mr. Weber completed his questioning
[3] thereafter in the next hour.

[4] Mr. Holt was not here when the questioning
[5] began. In fact, nobody even knew if he was going
[6] to be here during the course of his day. He had
[7] clearly not communicated with the other parties in
[8] this matter to indicate whether he had questions
[9] for Mr. Price.

[10] At approximately 3:30 or 4:00—I may be
[11] off on that a bit—we indicated very clearly
[12] Mr. Price would need to catch the last flight out,
[13] and we said to all of the parties at the table, how
[14] much do you have remaining in your questioning so
[15] we could make sure Mr. Price could be questioned by
[16] everybody properly? And at that time we raised the
[17] issue. The parties had the opportunity to allocate
[18] the time, if necessary, or to review what questions
[19] they wished to ask.

[20] I believe at about 4:30, whenever this
[21] was, Mr. Holt said he had about an hour of
[22] questioning total, and as Mr. Weber indicated, he

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[1] has an hour of questioning totaling—and I'm erring
[2] on the longer of the estimations they gave. And
[3] quarter of eight, as I indicated I would do, I said
[4] Mr. Price must leave to make his plane.

[5] I should also indicate Mr. Holt has not
[6] been here for the other depositions in this matter.
[7] He appeared for the first morning of depositions
[8] then did not appear again until yesterday mid
[9] morning when he again appeared. That does not
[10] limit his right to ask questions, of course, but it
[11] is up to him for him to coordinate his involvement
[12] in scope with questioning.

[13] Mr. Price was here from 9 a.m. to quarter
[14] to eight, and it's manifestly unfair to bring him
[15] back to Washington for another 45 minutes of
[16] questions that Mr. Holt, in theory, may have, based
[17] on his earlier interpretation that he had an hour
[18] of questions.

[19] MR. HOLT: Mr. Spitzer made a number of
[20] different points and I want to address each one of
[21] them.
[22] Yes, I did arrive at the deposition

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[1] yesterday approximately a half hour after
[2] Mr. Beckner's questioning began. I sat patiently
[3] throughout the course of the day waiting for Time
[4] Warner to complete its examination and for Bureau
[5] counsel to complete their examination, which they
[6] have every right to do.

[7] When Mr. Spitzer first indicated around
[8] 4:30 or so they intended to catch the flight out at
[9] 8:30 and would be terminating the deposition at
[10] quarter to eight, I said I have a problem with that
[11] because I do have approximately an hour or so of
[12] questioning for Mr. Price. And I tried to keep it
[13] short, but I can't guarantee it would be an hour
[14] because you don't know how questions are going to
[15] proceed. It depends on what the witness says.

[16] I made it clear, then, that if I wasn't
[17] able to get my questioning completed, that I would
[18] raise it as an issue with you, and that we would
[19] hopefully be able to proceed from that point
[20] forward, and everybody could be accommodated.

[21] Counsel for Time Warner didn't complete
[22] his questioning until around 6:30 and Bureau

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[1] counsel started with his questioning right
[2] afterwards, and I sat tight hoping that Bureau
[3] counsel would complete their questioning, and
[4] unfortunately they weren't finished until around
[5] 7:30 at which time we debated whether the witness
[6] could stay later.

[7] MR. SPITZER: Your Honor—

[8] JUDGE SIPPEL: Just a second. Let
[9] Mr. Holt finish.

[10] MR. HOLT: Thank you, Your Honor.

[11] So I represent an entirely separate party
[12] from Time Warner. And, of course, the Bureau and
[13] my client has a right to select which depositions
[14] they intend to participate in in order to gather
[15] the necessary information to prepare for trial.
[16] And the fact I made the decision that some
[17] depositions were worth attending and other
[18] depositions were not, in no way suggests that I
[19] shouldn't be allowed to proceed with questioning
[20] Mr. Price. Mr. Price has information based on the
[21] testimony provided yesterday, and my review of
[22] documents that I think is important to my client's

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[1] interests, and I think that it's important that I
[2] have an opportunity to question him so that we can
[3] make sure those interests are developed as this
[4] record proceeds to hearing.

[5] JUDGE SIPPEL: I hear you.

[6] What about Mr. Weber?

[7] MR. WEBER: Your Honor, the only comment
[8] the Bureau would care to make on this is in our May
[9] 16th letter to Liberty where we gave our deposition
[10] schedule, we did specifically state that we would
[11] attempt to complete the deposition by going beyond
[12] 5:30 p.m. that day or the witness would be required
[13] to return on the following day at 9:30 a.m. And
[14] Liberty never, to my knowledge, opposed such a
[15] statement.

[16] And the main reason I bring this up is
[17] tomorrow we have been informed that the Milsteins,
[18] who we planned to depose during the day, both have
[19] to leave by 5 p.m., and if we are not completed
[20] with them, I think we will be in the same situation
[21] we are right now, where, unfortunately, Cablevision
[22] did not have the chance to complete with Mr. Price.

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(1) And because we want to be able to complete our
(2) examination of the Milsteins, I think Cablevision
(3) joined us with our May 16th letter, has the right,
(4) then, to also complete its examination.

(5) MR. SPITZER: Joe is being unfair. We
(6) raised this issue this morning of the Milsteins'
(7) strong desire to get back tomorrow evening for a
(8) dinner honoring his parents, and we proposed to
(9) begin earlier, to take an abbreviated lunch break,
(10) and do everything possible to insure that they had
(11) the complete time to question both Howard and
(12) Edward, and we are going to make sure that does
(13) happen.

(14) And we raised this issue ahead of time to
(15) insure that all counsel would have that
(16) opportunity, and we are working on that fact, and
(17) nobody has ever suggested they won't have the
(18) opportunity to question fully either Howard or
(19) Edward Milstein.

(20) MR. HOLT: Your Honor-

(21) (Simultaneous conversation.)

(22) MR. HOLT: At that point, we said to

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(1) Mr. Spitzer, look, we try to move this forward as
(2) we attempted to do, but there is no guarantee that
(3) we will be able to complete this. And Bureau
(4) counsel, to my eyes, proceeded expeditiously to
(5) move through his examination under time
(6) constraints, knowing that I wanted to get an
(7) opportunity to question Mr. Price as well, and
(8) unfortunately we couldn't finish that.

(9) MR. SPITZER: Your Honor, Mr. Holt was not
(10) here early in the morning when we made it clear
(11) that Peter Price was going to be leaving at the end
(12) of the day. It seemed seems to me that a witness
(13) who answered questions continuously for 11 hours,
(14) not once asking-there were several hours for
(15) breaks at the request of those who were
(16) participating in the questioning. Mr. Price was
(17) seated, ready to go, answer forthrightly, and it is
(18) manifestly unfair for Mr. Holt to have a temper
(19) tantrum at quarter to eight when the witness says I
(20) got to go. 11 hours is plenty long for a witness
(21) to be answering questions.

(22) MR. HOLT: I dispute your dispute about

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(1) that. We had a discussion about whether or not you
(2) could accommodate my request to complete my
(3) examination, and you unilaterally decided that you
(4) were going to terminate the deposition and walk
(5) out.

(6) (Simultaneous conversation.)

(7) MR. HOLT: Cablevision again is a full
(8) party to the proceeding, and I sat by yesterday as
(9) the deposition proceeded. It's not my right to
(10) interfere with other counsel's examination and
(11) their ability to develop information they think is
(12) relevant to their client's interests, but I should
(13) have an opportunity to do the same.

(14) And I'm certainly willing to, if you were
(15) to order Mr. Price, to be made available for
(16) deposition. I'm willing to work with counsel to
(17) accommodate his schedule, but I think Cablevision
(18) has the right to make this request, and it's
(19) entirely legitimate, and a fair one.

(20) MR. SPITZER: I wish to add one point.
(21) The scheduling conference where initially it was
(22) two or three Wednesdays ago, where initially there

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(1) had been a list of 27 deponents proffered by the
(2) Commission, and that was winnowed down to the list
(3) of individuals currently slated to be deposed, you
(4) asked the various parties because there were three
(5) parties lined up, each of which wished to depose
(6) the individuals, whether there would be duplication
(7) of questions, and the parties represented they
(8) didn't think there would be and they would make an
(9) effort to minimize that, and there would be some
(10) coordination among the parties in terms of the
(11) questioning.

(12) Mr. Holt, even though he got there late,
(13) sat for hours and hours, handed pieces of paper
(14) which had questions on them to other counsel so his
(15) questions could be asked, at no point during the
(16) afternoon did he say, fellows, I got these areas
(17) that I want to cover, let's accelerate the process,
(18) let's not take a break here. There was no effort
(19) made to accommodate the fact the witness had been
(20) there since 9 a.m. and needed to make an 8:30
(21) flight.

(22) MR. HOLT: Mr. Spitzer has absolutely no

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(1) clue as to what I did or did not discuss with other
(2) counsel in this proceeding. And I think he's also
(3) mischaracterizing Your Honor's admonition the
(4) parties not to engage from tag-team type of
(5) questioning which would involve me asking a
(6) question, Time Warner, the Bureau, and back to me,
(7) which is what I think you were asking for
(8) clarification on during the course of the hearing
(9) that Mr. Spitzer is referring to.

(10) Yes, there were areas that were not being
(11) covered yesterday that I wanted to see covered, and
(12) that's going to be the focus of my questioning if
(13) I'm allowed to proceed with Mr. Price.

(14) JUDGE SIPPÉL: I heard enough. How about
(15) Mr. Beckner?

(16) MR. BECKNER: Yes, I have only a couple of
(17) brief comments.

(18) I think the underlying issue here is a
(19) simple one, and probably would only have to decide
(20) this kind of issue once and would be governed by
(21) your decision, and that issue is simply whether or
(22) not we are limited to a total amount of time that's

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(1) designated on the letter Mr. Weber sent on behalf
(2) of the Bureau to Time Warner and Cablevision.

(3) In other words, if we say that we want to
(4) depose Mr. Price for a day, does that mean a day is
(5) all we get? The premise in Mr. Spitzer's argument
(6) is that a day is all we get, and it's up to us to
(7) allocate among ourselves how we are going to divide
(8) up the day. That's not our understanding.
(9) Mr. Weber read you the letter that indicated that
(10) is not our understanding going in. We heard no
(11) objection to the content of that letter until
(12) today.

(13) We are not suggesting that Mr. Price's
(14) response to our questions were unresponsive, that
(15) he was a difficult witness, that his lawyers
(16) obstructed the deposition or anything like that.
(17) It's not a question of fault. It's simply a
(18) question of if we have more than a day's worth of
(19) questions and do we get to ask that.

(20) MR. SPITZER: We would have had no
(21) objection if they said we want Mr. Price for two
(22) days or a day-and-a-half or even it had been

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[1] unclear we would have accommodated them. But
[2] Mr. Holt demanded at 7:30 last night, I instruct
[3] Mr. Price to remain for an extra day when he had
[4] been there for nearly 11 hours answering every
[5] question. He had plans he changed several times to
[6] accommodate the lawyers.
[7] And simple matter of fairness, Your Honor,
[8] I could not tell Mr. Price he needed to stay over
[9] for perhaps a half hour of remaining questions
[10] Mr. Holt had they had not managed to ask over the
[11] course of the day, when there were literally hours
[12] nothing had happened at the request of the lawyers
[13] who were participated in the questioning.
[14] JUDGE SIPPEL: Let me ask, what do you
[15] mean nothing happened? Let me start off by asking
[16] this question. How long did you break for lunch?
[17] MR. SPITZER: Longer than we wanted.
[18] Probably an hour-and-a-half.
[19] JUDGE SIPPEL: What was the duration of
[20] these other breaks you are talking about?
[21] MR. SPITZER: Two to two-and-a-half hours.
[22] JUDGE SIPPEL: One-and-a-half hours plus

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[1] two-and-a-half hours.
[2] MR. SPITZER: Any objection to this?
[3] MR. HOLT: I would note during the
[4] hour-and-a-half break for lunch I was sitting in
[5] the conference room eating my sandwich while you
[6] and Mr. Price and Mr. Begleiter went to a
[7] restaurant. The bottom line is I was sitting in
[8] the conference room ready to go.
[9] (Simultaneous conversation.)
[10] MR. HOLT: There were various breaks
[11] during the course of the day, and those breaks, to
[12] the best of my recollection, involved some that
[13] Liberty needed in order to confer with co-counsel,
[14] at least one to confer with co-counsel from time to
[15] time on the issue of making somebody available or
[16] some documents available.
[17] MR. SPITZER: You are dead wrong on that.
[18] JUDGE SIPPEL: Wait a minute.
[19] MR. SPITZER: Your Honor--
[20] MR. HOLT: Using the phone quite a bit
[21] during the breaks and there was no objection to you
[22] that the deposition was proceeding slowly or any

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[1] burden being placed on you. When you said you were
[2] working out of there, I have a problem with that.
[3] (Simultaneous conversation.)
[4] MR. HOLT: I have questions that I have a
[5] legitimate right to ask.
[6] MR. SPITZER: First thing in the morning,
[7] we made it clear Mr. Price was available the
[8] entirety of the day. He had to go back. We never
[9] requested a delay. We never requested the brakes.
[10] He was available for questions to be posed to him
[11] throughout the day. You want him to come back to
[12] Washington for 45 minutes of questioning, and it
[13] doesn't make sense.
[14] JUDGE SIPPEL: Wait just a minute. I need
[15] some information here. I still don't understand.
[16] An hour-and-a-half for lunch, but why was there
[17] another hour-and-a-half, two hours not being used
[18] for questions?
[19] MR. WEBER: Part of that was with the
[20] conference with you yesterday afternoon. We were
[21] on the phone with you probably half an hour
[22] yesterday.

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[1] JUDGE SIPPEL: I recall that.
[2] MR. HOLT: Your Honor, if I recall
[3] correctly, that there were various restroom breaks
[4] that were taken by questioning counsel.
[5] JUDGE SIPPEL: Those are reasonable. The
[6] time frame you are giving me sounds a lot.
[7] MR. HOLT: Restroom breaks, time spent
[8] trying to contact your office, trying to locate a
[9] document Time Warner's counsel needed to conduct
[10] the examination.
[11] I didn't keep track of the breaks,
[12] frankly, but it seemed to me during the breaks the
[13] phone was being used quite a bit by Liberty's
[14] counsel and Price to contact his office. There was
[15] no protest to the taking of breaks--
[16] (Simultaneous conversation.)
[17] MR. SPITZER: I never requested the break,
[18] and--
[19] JUDGE SIPPEL: It would be expected that a
[20] businessman is going to be making occasional calls,
[21] but--at the beginning of the session when Mr. Holt
[22] came in or even before Mr. Holt came in, were there

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[1] any ground rules that were worked out between
[2] counsel before you went on the record?
[3] MR. WEBER: No, Your Honor, not that I can
[4] recall.
[5] JUDGE SIPPEL: You got to do that, and you
[6] better do that tomorrow morning. If you are having
[7] a problem, give me a call.
[8] It seems to me as we hurdle this, as the
[9] situation is disturbing because it's an unfortunate
[10] thing that never needed to happen. What you need
[11] to do is informally amongst the lawyers, certainly
[12] the lawyers going to be asking the questions, is
[13] break out time frames and areas that each are going
[14] to cover. I know you can't do it with precision,
[15] but at least the night before or morning of, have
[16] some feel, some confidence you are going to get
[17] your line of questions in, and then you could let
[18] Mr. Spitzer and Mr. Begleiter know, look, we need
[19] time for this person or this person or this person
[20] to ask questions. You don't have to tip your hand
[21] into the areas, of course.
[22] Then when you run into a problem, you

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[1] could be able to anticipate that at three or four
[2] in the afternoon and give me a call. But Mr. Price
[3] is on the stand from nine or 9:30 in the morning
[4] until 7:30 at night, with the issues in the case
[5] being what they are--I don't want to oversimplify
[6] it. I'm hard-pressed to require him to come back
[7] to Washington for an hour or two of a deposition.
[8] What I am going to do is since we have
[9] extended the discovery in this case for
[10] telephone--I'm sorry, not--for one telephone
[11] deposition and for one other deposition next week,
[12] I will give Mr. Holt a telephone deposition, the
[13] follow-up questions in a telephone deposition with
[14] Mr. Price either by the end of this week or by the
[15] Thursday of next week.
[16] MR. HOLT: Could I request that we try to
[17] arrange it for Tuesday of next week because I'm
[18] going to be in trial in Connecticut for the
[19] beginning part of the week.
[20] JUDGE SIPPEL: Next week?
[21] MR. HOLT: Yes. The 14th. It would be
[22] the 7th.

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[1] JUDGE SIPPEL: At which time I will not be
 [2] here, but that's all right.
 [3] MR. SPITZER: The only issue that raises,
 [4] Your Honor, is witness statements which we had
 [5] pegged to the completion of the depositions and the
 [6] availability of transcripts, but maybe we could
 [7] work that out amongst ourselves.
 [8] JUDGE SIPPEL: I will let you all work
 [9] that out. This is not going to be assuming that
 [10] the witness cooperates and the attorneys for
 [11] Liberty cooperate and there has been no indication
 [12] to the contrary of that. I'm not expecting this is
 [13] going to take more than an hour of everybody's
 [14] time.
 [15] MR. HOLT: I wouldn't want to say I'm a
 [16] hundred percent sure it's going to take an hour. I
 [17] imagine based on the questions I have now that it's
 [18] probably going to be around two hours. Again, it's
 [19] going to depend on the deposition. It's hard to
 [20] tell with his responses where the questions may
 [21] lead once the door is open, but I will represent to
 [22] you I will move quickly and not take more time

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[1] necessary to ask the question, which I would do in
 [2] any event.
 [3] JUDGE SIPPEL: I'm going to hold you to
 [4] that. Two hours so Mr. Price can plan his day, and
 [5] that is all subject to the witness and the
 [6] attorneys cooperating. But everything runs as it's
 [7] supposed to be running. I'm going to limit you to
 [8] two hours so Mr. Price can plan his day.
 [9] As I say, with all the legal talent that
 [10] you have there from nine in the morning to seven at
 [11] night with one witness and everybody knows what the
 [12] issues are and everybody is questioning him on the
 [13] same question issues, there is no reason why the
 [14] information can't be developed over that period of
 [15] time.
 [16] MR. HOLT: In the event that questioning
 [17] proceeds on Friday and there is some sort of
 [18] dispute as to the witness's cooperation or the
 [19] attorney's cooperation, do you envision somebody
 [20] would be available to contact to resolve the
 [21] dispute?
 [22] JUDGE SIPPEL: At that point for this

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[1] limited purpose, I'm going to let you resolve that
 [2] amongst yourselves. If I have to be contacted
 [3] about it when I came back, I will do what I have to
 [4] do, but I don't see any reason to ask somebody else
 [5] to come in and moderate this. There has been no
 [6] indication--this is a very unusual situation you
 [7] are outlining here.
 [8] And as everybody has pointed out to me,
 [9] this is not because some witness has been unwilling
 [10] to answer questions or it's been misconduct on the
 [11] part of counsel, particularly on the counsel
 [12] representing the witness, which is frequently the
 [13] type of thing we are trying to be concerned about.
 [14] I certainly will alert, as I have in the past, I
 [15] will alert Judge Sturmer to the fact that there is
 [16] this deposition going on, and if he's available to
 [17] take the call he might get one, but I'm not going
 [18] to ask Judge Sturmer to wait for a call.
 [19] MR. SPITZER: Bob Begleiter is raising a
 [20] good point. It would be easier for us if this
 [21] telephonic deposition was done this Friday just
 [22] because our preparation of witness statements is

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[1] contingent upon our being able to talk to witnesses
 [2] freely, et cetera, and show them transcripts, and
 [3] that obviously is something that we are willing to
 [4] be limited from doing until the conclusion of the
 [5] discovery because of the order that we have
 [6] discussed at length with Your Honor, so it would
 [7] certainly be much easier if we could do it this
 [8] Friday.
 [9] JUDGE SIPPEL: I would like to see it done
 [10] this Friday too. Can't be done this Friday--
 [11] MR. BEGLEITER: I'm not telling tales out
 [12] of school. Mr. Price's statement will probably be,
 [13] if not the longest, one of the longest and more
 [14] comprehensive that we are going to submit. I want
 [15] to show him before I prepared the statement
 [16] depositions of literally everyone else. How can I
 [17] do that if--and also comply with the sequestration
 [18] order if I'm going to wait until a week from Friday
 [19] to do that? I can't prepare his statement.
 [20] JUDGE SIPPEL: You are raising a good
 [21] point. Why can't he be finished on Friday?
 [22] Mr. Weber, you set the schedule. I want ask you.

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[1] MR. WEBER: I have no objection to that
 [2] being done on Friday, but I'm a little surprised to
 [3] hear Mr. Spitzer and Mr. Begleiter say they're
 [4] willing to do that on Friday because that was going
 [5] to be another matter with you, they're going to be
 [6] in New York because they also want--and we don't
 [7] object--to move the Comsearch witness who is
 [8] scheduled on Friday to be also held on Wednesday,
 [9] along with Mr. Stern and Mr. McKennon.
 [10] MR. HOLT: We got two witnesses next week.
 [11] MR. WEBER: Three.
 [12] MR. HOLT: And after a week I have a
 [13] hearing.
 [14] JUDGE SIPPEL: I can't accommodate these
 [15] conflicts. Somebody else is going to have to cover
 [16] you. I feel I'm bending over backwards to
 [17] accommodate Mr. Holt's interest on this because I
 [18] have not been totally convinced--I have not been
 [19] convinced, rather, there had been inadequate
 [20] deposition of Mr. Price taken at this stage.
 [21] Something has to be worked out to accommodate both
 [22] sides on this.

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[1] MR. HOLT: I will commit to taking the
 [2] deposition Friday. There is going to be a number
 [3] of logistical arrangements that need to be made,
 [4] and I suspect it's also subject to Mr. Price's
 [5] availability, but I imagine that counsel may make
 [6] every effort to make him available. I will need to
 [7] arrange for a Court Reporter. Again, it's only a
 [8] couple of days notice.
 [9] MR. SPITZER: We had a Reporter for the
 [10] other depositions in New York already held. I
 [11] certainly would know if other counsel are agreeable
 [12] to using the same individual.
 [13] JUDGE SIPPEL: Mr. Beckner?
 [14] MR. BECKNER: Yes. We had two depositions
 [15] in New York already of Liberty personnel, and I
 [16] think actually it was counsel for Liberty that may
 [17] have arranged the Reporter. The guy seemed
 [18] perfectly acceptable, as far as I could tell.
 [19] JUDGE SIPPEL: I can't concede that you
 [20] can't get the logistics worked out with the Court
 [21] Reporter between now and Friday, particularly in
 [22] New York where to go up to a law firm to take a

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(1) deposition, this-logistically I'm not going to get
(2) into it. I will let you handle that.
(3) What time on Friday can we do this?
(4) Because if it's after 4:00, I'm not going to commit
(5) myself to being around to take the telephone call.
(6) MR. HOLT: I suggest we start at 1:00 and
(7) that way by the end of my allotted two hours if
(8) there are any problems, we will be hitting our 2:00
(9) conference call time anyway, and we could raise the
(10) issue. And if there aren't any questions, then the
(11) deposition will conclude by three.
(12) MR. SPITZER: That's fine with counsel,
(13) but we have not spoken with Mr. Price about this,
(14) so we would have to check with him and get back to
(15) counsel.
(16) JUDGE SIPPEL: If there is any problem on
(17) Mr. Price's side, you tell him that I'm very much
(18) interested in seeing this deposition concluded by
(19) 3:00 on Friday, and it's certainly going to be, I
(20) think, in your interests and Mr. Price's interests
(21) to have him available if there is going to be any
(22) problems. I'm not suggesting that there will be

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(1) any.
(2) Also just let me finish this thought,
(3) Mr. Spitzer. I want to commend all the counsel and
(4) obviously the witnesses, too, because I haven't
(5) been interrupted all week with questions on the
(6) actual questioning at the deposition. And to me
(7) that's a very commendable feat for everybody
(8) involved in this process.
(9) So I'm pointing out if there is a snag or
(10) something, I want it be here to straighten it out.
(11) And the best time to do that would be before 3:00
(12) on a Friday afternoon.
(13) MR. HOLT: I appreciate your willingness
(14) to accommodate everybody.
(15) JUDGE SIPPEL: I don't want a repeat of
(16) this, and therefore tomorrow morning after you
(17) finish today with Mr. Nourain I'm expecting you are
(18) going to do this. Somehow you will work the
(19) logistics out for tomorrow. Let's talk about that.
(20) MR. SPITZER: I have no doubt we will be
(21) able to do that. Edward is first thing on tomorrow
(22) and Howard is going to be prepared to follow hard

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(1) on his heels.
(2) And although we are very hopeful they
(3) could be done in time to leave when they need to,
(4) we will see where we are left at the end of the
(5) day, and if we need to come up with some
(6) arrangement otherwise, we will do so.
(7) JUDGE SIPPEL: You will see how it's
(8) going. I would think by midday, and you could get
(9) to me earlier in the afternoon to try to nip any
(10) problems in the bud, if you see any coming up.
(11) But as I heard you say, or somebody-maybe
(12) it was Mr. Holt-I'm not sure if both of the
(13) Milsteins are going to be leaving at 5:30?
(14) MR. SPITZER: It's their strong
(15) preference. I don't think there is any doubt that
(16) Edward Milstein will be done by then. Counsel have
(17) basically said that Ed will go in the morning and
(18) Howard will go in the afternoon, so I don't think
(19) there is an anticipation that either one would be a
(20) terribly lengthy witness.
(21) JUDGE SIPPEL: You will have to play it by
(22) ear, but when you say they want to leave by 5:30,

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(1) will you be leaving 5:30 to catch a 7:00 flight?
(2) MR. SPITZER: They would be liable to be
(3) able to leave the Star Chamber at about 5:30. I
(4) don't know the precision, Your Honor, but they need
(5) to be back in New York for a dinner. They are
(6) willing to be here for the full business day.
(7) JUDGE SIPPEL: Well, they better be warned
(8) ahead of time that one of them may get delayed. I
(9) hate to have it put that way, and I am not going to
(10) be very happy if they do get delayed, because again
(11) I feel with the prepared counsel that these
(12) depositions can be moved through with some
(13) expedition. You might want to cut back on the
(14) lunchtime and try to keep the breaks to a bare
(15) minimum.
(16) MR. SPITZER: We suggested that.
(17) JUDGE SIPPEL: I urge that typically once
(18) you get past 1:30 in the afternoon, things
(19) naturally tend to slow down. So the tendency is to
(20) get the thing started as soon as they walk in the
(21) door, if at all possible, get them going, keep the
(22) breaks to a bare minimum, defer the lunch hour

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(1) until as late as you can and cut the lunch hour to
(2) no more than an hour, and people will be breathing -
(3) easier at the other end, hopefully. That's all I
(4) have on that.
(5) Anything more?
(6) MR. WEBER: No, Your Honor. As long as
(7) you don't have any objection to the Comsearch
(8) witness being deposed on Wednesday of next week.
(9) JUDGE SIPPEL: Let's hear a little bit
(10) more about that. What is the name of that witness?
(11) MR. WEBER: We initially had Joe Boccardi
(12) listed. I guess he is on a two-month long vacation
(13) or something. So one of the other Comsearch
(14) agents, his name is Duy Duong, and he will be the
(15) one we are deposing.
(16) JUDGE SIPPEL: That will be on Wednesday,
(17) I believe-
(18) MR. SPITZER: The rationale for this-and
(19) it's a joint application-since there are no other
(20) witnesses being deposed this Friday in Washington,
(21) it made sense from a logistical point of view,
(22) since Bob Begleiter and I would like to be back in

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(1) our offices one day, if possible, we would prefer
(2) not to be here for what I imagine is a reasonably
(3) brief deposition of Mr. Duong, and if we could put
(4) that over to next Wednesday to the other
(5) depositions of Joe Stern and Mr. McKennon, that
(6) seemed to make sense from a logistical point of
(7) view.
(8) JUDGE SIPPEL: Are these going to be New
(9) York depositions?
(10) MR. BEGLEITER: One is going to be
(11) telephonic and two in D.C.
(12) MR. SPITZER: Duong is an employee of
(13) Comsearch in Reston, Virginia, or some such.
(14) JUDGE SIPPEL: And the other witness is
(15) going to be who?
(16) MR. KEAM: Joseph Stern.
(17) JUDGE SIPPEL: You received my order?
(18) MR. WEBER: Yes.
(19) JUDGE SIPPEL: So we covered all of that.
(20) Then we are talking about May 31st, the
(21) continuation of Mr. Price via telephone in New York
(22) City, and June 5, Mr. Duong here in Washington,

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[1] D.C. on Wednesday, June 5. And other than that,
[2] the discovery deadlines, everything else remains
[3] the same.

[4] MR. HOLT: Thank you, Your Honor.

[5] JUDGE SIPPEL: Have a good day.

[6] (End of telephone conference with Judge
[7] Sippel at 4:15 p.m.)

[8] BY MR. WEBER:

[9] Q: I had shown you before we broke what we
[10] marked as Nourain 5, but I would like to have you
[11] hold on to that for a moment because I'm going to
[12] show you a different document.

[13] (Nourain Exhibit No. 6 was
[14] marked for identification.)

[15] MR. WEBER: For the record, this is a
[16] four-page document with nonsequential Bates
[17] numbers, first one is 15698 and 15699, then 15690
[18] and 15666.

[19] BY MR. WEBER:

[20] Q: Earlier you discussed the Comsearch
[21] purchase order. Is that what the first page of
[22] this is?

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[1] A: Yes.

[2] Q: And when one of these--does this mean that
[3] the amount of 387 has already been paid, or is that
[4] what they expect to have paid?

[5] MR. BEGLEITER: Objection. Lack of
[6] foundation.

[7] Answer, if you can, Mr. Nourain.

[8] THE WITNESS: What this means, means that
[9] this purchase order allowed him to, number one,
[10] study the path; and number two, send it out for
[11] prior coordination, as is stated.

[12] BY MR. WEBER:

[13] Q: Does Comsearch wait until they get paid
[14] before they do either the search or sending it out
[15] for prior coordination?

[16] A: No. That has nothing to do with the way
[17] Comsearch does their work. They do the work based
[18] on my telling them to do that. These are--those
[19] people before I talk with them or after I submit
[20] them, for them to do the services, I call it the
[21] services, or might have been generated after they
[22] done the original services means to clear the

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[1] frequency, but it's been generally done within the
[2] next give or take week or couple of weeks of when I
[3] ask them to do the service.

[4] Q: If you notice at the bottom of the first
[5] page there is a signature. Do you recognize whose
[6] signature that is?

[7] A: Yes. This is the person who actually
[8] generates this purchase orders named Joe Cipolla.
[9] 15698.

[10] Q: At what point would this form be created?

[11] A: My portion of that job is to do the first
[12] one, which is the request when I was referring
[13] statements before, this is the part I would do.

[14] Q: You would do the handwritten?

[15] A: Handwritten portion of it, and this will
[16] be signed, and then go to Joe Cipolla and he
[17] generates that, and will send to the various
[18] vendors, in this case Comsearch, and send a copy to
[19] our office and will be filed.

[20] Q: So by the time this gets sent to
[21] Comsearch, you had already spoken to them and they
[22] would have already begun the work; correct?

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[1] A: Absolutely.

[2] Q: Then this would be sent to a finance
[3] office in Liberty in order for Liberty to write a
[4] check in order to pay Comsearch for its services?

[5] MR. BEGLEITER: Objection to the form of
[6] the question.

[7] Answer, if you can.

[8] THE WITNESS: My experience on this is
[9] after this has been done at some later date, they
[10] would invoice to certain departments and they get
[11] paid for it.

[12] BY MR. WEBER:

[13] Q: If you would turn to the third page of
[14] this exhibit which has the Bates stamp 15690, do
[15] you recognize this as being what Comsearch created
[16] in response to the purchase order here, if you
[17] notice, if you can tell?

[18] A: This is what Comsearch created based on
[19] the information I provided to him at the 1994.

[20] Q: And earlier we were speaking, if you can
[21] recall, about the building at 440 East 56th Street;
[22] correct?

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[1] A: That's correct.

[2] Q: And looking at this Comsearch report on
[3] the third page of Nourain Exhibit 6, is this,
[4] indeed, a frequency coordination or a PCN for 440
[5] East 56th Street?

[6] A: That's correct.

[7] Q: And if the date 3/21/94 on the upper
[8] right-hand corner, does that mean this was created
[9] on or about 3/21/94?

[10] A: That's correct.

[11] Q: And again for this building, 440 East 56th
[12] Street, can you recall if you had any follow-up
[13] with Pepper & Corazzini after you received the PCN
[14] from Comsearch?

[15] A: As I stated before, this is part of the
[16] work that Comsearch would do, and at that point I
[17] will let Comsearch to send information out and copy
[18] everything to Pepper & Corazzini, and that would be
[19] it.

[20] Q: If you notice at the very top of the third
[21] page, there is printout which appears to have come
[22] from a facsimile machine at Comsearch. And it

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[1] states that this is page 11.

[2] If you can recall at all, do you know what
[3] else you would have received from Comsearch at the
[4] time you received this document?

[5] A: I recall this is one of the path, one of
[6] the four path which all came together by Comsearch
[7] which the other path has also indicated. Mistake I
[8] mentioned with Comsearch at that point was four
[9] path, and that was this page. And I recall one of
[10] those paths were the passive, so that's why the
[11] number increased to 11 because they were number of
[12] studies with some technical information, so total
[13] was four path coordinated at one time when I
[14] requested it.

[15] Q: Were you aware of the--you weren't aware
[16] of any mistake in March of 1994, however, were you?

[17] MR. BEGLEITER: Would you repeat the
[18] question, please.

[19] (Whereupon, the Court Reporter read back
[20] the previous question.)

[21] BY MR. WEBER:

[22] Q: You were saying that you were having them

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[1] review because of mistakes on four paths.
[2] A: No. I said that I will review any
[3] technical mistakes on the four path, and that was
[4] there.
[5] Q: I misunderstood your answer. I understand
[6] it now.
[7] Now I would like you to go back to Nourain
[8] Exhibit Number 5 and tell me if you have seen this
[9] document in its entirety before.
[10] (Witness reviews document.)
[11] A: Only thing familiar to me is Attachment 2.
[12] Q: And you are referring to--you said
[13] Attachment 2?
[14] A: Two, which is the affidavit of Behrooz
[15] Nourain dated February 21st, and up to the end of
[16] that affidavit.
[17] Q: The rest of the document does not look
[18] familiar?
[19] A: No.
[20] Q: Let's go to the attachment to which this
[21] caption is "Affidavit of Behrooz Nourain." I would
[22] like to have you turn to the last page of the

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[1] affidavit and tell me if that's your signature.
[2] A: That's correct.
[3] Q: And by signing, were you attesting that
[4] what was included in this affidavit is true and
[5] correct, if you understand what I mean by
[6] attesting?
[7] A: That's what I was going to ask, what does
[8] that mean.
[9] Q: By signing here, were you swearing that
[10] everything within this affidavit was true and
[11] correct?
[12] A: Yes.
[13] Q: Did you write this affidavit yourself?
[14] A: No, I did not.
[15] Q: I would like you to turn specifically to
[16] the paragraph numbered five in the affidavit, and
[17] there is a statement that you are advised that Time
[18] Warner has opposed Liberty's pending application.
[19] What application were you referring to
[20] when you made that statement?
[21] A: Those were the application that involved
[22] with the interconnecting buildings, the hard-wire

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[1] type buildings it's called.
[2] Q: I would probably complete the sentence
[3] because it does say Liberty's pending application
[4] to the Federal Communications Commission for
[5] various 18 gigahertz microwave licenses.
[6] A: Exactly, the various 18 gigahertz. It was
[7] understood that when I signed that, the whole
[8] discussion was on the hard-wire buildings.
[9] Q: Was it necessary to apply to the FCC to
[10] hard-wire a building?
[11] MR. WEBER: Off the record for a second.
[12] (Discussion off the record.)
[13] BY MR. WEBER:
[14] Q: By your statement that this was dealing
[15] with applications for hard-wired buildings, are you
[16] referring to buildings where Liberty was applying
[17] for a microwave facility to back up the hard wire?
[18] A: Yes.
[19] Q: And you stated that you were advised that
[20] Time Warner has opposed this. Who advised you of
[21] that?
[22] A: Could you repeat the question again?

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[1] Q: This is paragraph five of your affidavit.
[2] It states, I--meaning you were advised that Time
[3] Warner has opposed these applications, and I'm
[4] asking you who advised you of that.
[5] MR. BEGLEITER: If this was done to the
[6] extent this requires the disclosure of a privileged
[7] communication from an attorney to a client, I
[8] direct him not to answer.
[9] MR. WEBER: Just the mere fact of stating
[10] that person X is--
[11] MR. BEGLEITER: I'm going to agree with
[12] you, and I will let him answer with my following
[13] notation. I believe the word here was ill-advised
[14] and should be informed. If the witness is going to
[15] testify as to who merely informed him about this
[16] fact without giving attorney advice, I will permit
[17] it, and I do not consider that any waiver of any
[18] privileges.
[19] BY MR. WEBER:
[20] Q: Who informed you that Time Warner has
[21] opposed Liberty's pending applications?
[22] A: Jim McNaughton, as an attorney who worked

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[1] with me on the answer to this affidavit.
[2] Q: Do you know approximately how many
[3] applications Time Warner had opposed? Were you
[4] informed of that?
[5] A: The only information I knew that it was
[6] mentioned about those hard wire buildings.
[7] Q: I'm going to show you what was previously
[8] marked as Price Exhibit 7.
[9] (Document handed to the witness.)
[10] Q: And I ask you to thumb through this and
[11] tell me if you have ever seen this document in its
[12] entirety previously.
[13] A: I need to talk to you.
[14] (Witness confers with counsel.)
[15] A: I have seen it entirely. Bob showed it to
[16] me.
[17] Q: And then on the very last page of Price
[18] Exhibit 7 there is a document entitled declaration
[19] of Behrooz Nourain. Is that your signature on this
[20] document?
[21] A: That's correct.
[22] Q: And there you state that you had

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[1] read--called the "surreply," and that the
[2] statements therein are true and correct? Is that
[3] correct that you did that?
[4] A: Yes.
[5] Q: I would like you to turn to the third page
[6] of the Price Exhibit 7 and look at the second
[7] paragraph. There is a sentence in the middle of
[8] the paragraph that starts "to compound the
[9] situation." Do you see that sentence?
[10] A: Yes.
[11] Q: It goes on to say, (reading) the
[12] administration department failed to notify
[13] Mr. Nourain a grant of Liberty's applications was
[14] being held up indefinitely as a result of Time
[15] Warner's petitions.
[16] Do you see that?
[17] First I will ask you, who, if you know, is
[18] being referred to by the administration department?
[19] A: To me, anybody was working with filing
[20] licenses, not involved in the technical. That
[21] means whether it's Pepper & Corazzini or anybody
[22] outside of the engineering working on all these

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[1] applications.

[2] Q: Is it true they failed to notify you of
[3] Time Warner's petitions?

[4] A: Yes, of all Time Warner petitions. As I
[5] stated before, I was aware of the hard-wire
[6] building by February.

[7] Q: Who made you aware again of the petitions
[8] against the hard-wired buildings?

[9] MR. BEGLEITER: Asked and answered.

[10] THE WITNESS: Jim McNaughton.

[11] BY MR. WEBER:

[12] Q: Did you ever inquire from them whether
[13] petitions were being filed against additional
[14] applications?

[15] A: No, I did not.

[16] Q: Did Mr. Lehmkuhl ever let you know that
[17] petitions were being filed against Liberty
[18] applications?

[19] MR. BEGLEITER: Ever?

[20] THE WITNESS: Yes, at some point.

[21] BY MR. WEBER:

[22] Q: Prior to May 17th, 1995, did Mr. Lehmkuhl

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[1] ever let you know?

[2] A: Yes, prior to May 17, yes.

[3] Q: And at what point did Mr. Lehmkuhl let you
[4] know that petitions were being filed against
[5] Liberty applications?

[6] A: End of April, 1995.

[7] Q: Were you ever involved with any of the
[8] decision-making process of whether to install a
[9] microwave receiving antenna on a building or
[10] whether to connect the building by a hard-wire
[11] coaxial cable?

[12] A: Would you repeat it again?

[13] Q: Let me ask it a different way. Certain of
[14] the buildings Liberty provided service to received
[15] that service from a microwave antenna; correct?

[16] A: That's correct.

[17] Q: Other buildings receive that service
[18] through a coaxial cable which is connected to a
[19] building receiving it from a microwave antenna;
[20] correct?

[21] A: Yes, some buildings are that way.

[22] Q: Were you ever a part of--obviously a

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[1] decision would have to be made at some point
[2] whether to put an antenna on a building or whether
[3] to connect it by a coaxial cable?

[4] A: Yes.

[5] Q: Were you ever a part of the process which
[6] led to the decision of whether the building would
[7] have a coaxial cable connection or whether it would
[8] have an antenna?

[9] MR. BEGLEITER: I will object. Lack of
[10] foundation.

[11] Answer, if you can.

[12] THE WITNESS: I never been--to my
[13] knowledge, I never been involved in that decision.

[14] BY MR. WEBER:

[15] Q: If a building is being connected with
[16] coaxial cable, hard-wired building, does Liberty
[17] refer to it as supertrunking?

[18] A: Well, it was referred to my knowledge of
[19] it called "T" Block. That's the terminology that
[20] was there, and I just adapted that.

[21] Q: Was it part of your duties to design how
[22] the building or how the coaxial cable would enter

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[1] the building?

[2] A: Part of my duty was to survey the
[3] buildings, and at some point I would do the
[4] surveys, some of the buildings, which the decision
[5] might have been made already is that or at least
[6] was proposed that was those type. They would have
[7] told me that just survey it for the
[8] interconnections, technical survey, and then I
[9] would just do the survey.

[10] Q: Can you ever recall any discussions--
[11] regarding the legalities of connecting noncommonly
[12] owned buildings with the hard-wired coaxial cable?
[13] A: No. I was only involved in the technical
[14] part of the projects.

[15] MR. WEBER: Thank you, Mr. Nourain. Those
[16] are all the questions I have for you today.

[17] (Brief recess.)

[18] EXAMINATION BY COUNSEL FOR
[19] TIME WARNER CABLE OF NEW YORK CITY
[20] BY MR. BECKNER:

[21] Q: Mr. Nourain, my name is Bruce Beckner, and
[22] I represent Time Warner Cable in this proceeding.

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[1] I think Mr. Weber has already gone through with you
[2] and advised you, as you undoubtedly know, that your
[3] testimony here is under oath, you are sworn to tell
[4] the truth. And because of that, if there is a
[5] question of mine that you don't understand either
[6] because it doesn't seem to make sense to you or you
[7] can't hear me, please feel free to say so and I
[8] will repeat the question or try to explain it.

[9] A: I will.

[10] Q: Also I will note for the record to
[11] forestall any comments from Liberty's counsel that
[12] I have been in and out of the deposition while
[13] Mr. Weber was asking the questions, I will do my
[14] best not to re-ask the same questions Mr. Weber
[15] asked.

[16] MR. SPITZER: If you ask the same
[17] question, I will make sure you get the same answer.

[18] MR. BECKNER: I'm sure you will.

[19] BY MR. BECKNER:

[20] Q: At the beginning of his examination of
[21] you, Mr. Weber asked about your degrees and so on.
[22] And one question that I don't think I heard him ask

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[1] that I would like to ask you is, do you have any
[2] kind of certificates or licenses? For example, I
[3] know there is a term called Registered Professional
[4] Engineer, which is a term I heard in some of the
[5] radio business, so I want you to tell me if you
[6] have any certificates or licenses.

[7] A: No, I do not.

[8] Q: Now, he asked you early on in his
[9] examination about the survey that you did of a
[10] building where Liberty was negotiating to provide
[11] service to a particular building. Early on that
[12] process somebody would ask you to do a survey of
[13] that building and you testified about that. Do you
[14] remember that testimony?

[15] A: Yes, I do.

[16] Q: General?

[17] A: Yes.

[18] Q: And I think you testified that one of the
[19] things that you checked was whether or not there
[20] was or could be established a microwave path to the
[21] roof of that building from your existing
[22] transmitters; is that right?

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[1] A: Yes. I stated what we called line of
[2] sight between the transmitter and the receiver.
[3] Q: And another thing I think you said was
[4] that you looked at what problems there might be
[5] with wiring the inside of the building also; is
[6] that right?
[7] A: No. I don't know about the problem, what
[8] you mean by the problem.
[9] Q: Well, let me ask the question differently.
[10] Did you, as part of this preliminary
[11] survey of a building, take a look at whatever
[12] wiring was already in place inside the building
[13] that might be used for distribution of the
[14] television signal?
[15] A: No. That is not part of the survey.
[16] Q: That's not part of the survey.
[17] Did you also determine in that preliminary
[18] survey whether or not it would be possible to
[19] provide Liberty's program service to the building
[20] by means of a coaxial cable from another building
[21] on the same block that Liberty already was serving?
[22] A: No, that was not.

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[1] MR. BECKNER: I would like the Reporter to
[2] mark this document as an exhibit and hand it to the
[3] witness.
[4] (Nourain Exhibit No. 7 was
[5] marked for
[6] identification.).
[7] BY MR. BECKNER:
[8] Q: Just for the record, you have been handed
[9] a document which has been marked as Exhibit 7 to
[10] your deposition, and it has production number 3021
[11] at the bottom. It's a one-page document. Take a
[12] look at it, if you will, and let me know when I can
[13] ask you some questions about it.
[14] A: Okay. You could go ahead.
[15] Q: This appears to be some sort of a form,
[16] and, in fact, it says it's a form at the top.
[17] Is this a form that you used during the
[18] year 1994 when you were working at Liberty?
[19] A: Yes, that is it.
[20] Q: Is this the form that you were expected to
[21] fill out in doing a survey of a building that
[22] Liberty was considering providing service to?

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[1] A: This was the form, yes.
[2] Q: There wasn't any other form different than
[3] this one that was being used for that purpose in
[4] 1994, was there?
[5] A: No, it wasn't.
[6] Q: Also, did you use this same form in 1995
[7] as well?
[8] A: We changed the form to the different
[9] format.
[10] Q: When did you do that, if you remember?
[11] A: I don't recall. I know right now we are
[12] using a different form, so I don't recall when that
[13] would be. I would presume that would be somewhere
[14] between '94 and '95.
[15] Q: But beyond that you just don't remember
[16] when the change was made?
[17] A: No, I do not.
[18] Q: I'm going to ask you about this specific
[19] form that you're looking at here which has some
[20] handwriting on it.
[21] Is this your handwriting, sir?
[22] A: That's correct.

[1] Q: Is this a preliminary site survey for the
[2] building at 120 East End?
[3] A: That's not a preliminary site survey is
[4] that I referred before. The site survey I referred
[5] before was line of survey.
[6] Q: Microwave?
[7] A: Yes.
[8] Q: That was the only thing you looked at?
[9] A: That is absolutely correct.
[10] Q: Then tell me when you would have occasion
[11] to use this form that we are now looking at which
[12] is Nourain Exhibit 7.
[13] A: The forms are the same. The mission is
[14] different. The original mission is to go for a
[15] line of sight survey and come back to the report.
[16] After it's established there is no line of sight
[17] survey, then the discussion goes in there not by
[18] me, by other group, that what would be the way to
[19] do it. And that was--then it will come back to me
[20] another request look at the building as an
[21] interconnect building.
[22] At that point I will go there and do the

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[1] same site survey strictly for that. The form you
[2] are showing me right now, Exhibit 7, are the second.
[3] request that generally come back that can be
[4] established technically the interconnecting
[5] different buildings, and this is that.
[6] Q: Now, I noticed on the form, in the second
[7] half of the form which you have not filled out in
[8] this particular example, is what's called a
[9] distribution survey?
[10] A: Yes.
[11] Q: Can you tell me, as a general practice,
[12] when the distribution survey was completed, not
[13] necessarily for this particular building but as a
[14] general practice of the company?
[15] A: At that particular time I was involved in
[16] doing for this particular building only the outside
[17] survey.
[18] Q: I understand.
[19] A: And when the distribution would be done,
[20] most of the time--two ways it will be done, one if
[21] there is the request by the sales people to be
[22] specific, then you do the site survey; or if there

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[1] was a certain question asked of them from the
[2] building which requires more information, then we
[3] proceed with the more detailed site survey.
[4] Q: And that would be the distribution survey?
[5] A: At 1994 that would be the case, yes.
[6] Q: Can you tell me in what way the current
[7] site survey form which you said is different from
[8] this one that we have been looking at Exhibit 7,
[9] can you tell me what are the differences between
[10] the form you are using today and the one that we
[11] are looking at which is Exhibit 7?
[12] A: The information is pretty much the same.
[13] As I mentioned, the format is different. Still is
[14] the line of sight survey, still is an "I" Block in
[15] there and the distribution survey. But in addition
[16] there are some additions to it like camera canal
[17] and stuff like that.
[18] Q: I want to go back with you and ask you to
[19] look at what's already been marked as Exhibit 6 to
[20] your deposition. Is that among the papers in front
[21] of you? It's the purchase order. If you would
[22] turn to the last page of Exhibit 6, which is a copy

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[1] of another purchase order.

[2] MR. BEGLEITER: Bates number 15666,

[3] Mr. Beckner?

[4] MR. BECKNER: Yes.

[5] MR. BEGLEITER: Thank you.

[6] BY MR. BECKNER:

[7] Q: I take it this is a purchase order for
[8] 430-440 East 56th Street that was made in 1995 as
[9] opposed to the earlier sheets which were for the
[10] same address made in 1994.

[11] A: Could you repeat the question again,
[12] please?

[13] Q: The exhibit consists of copies of three
[14] purchase orders. The first two which Mr. Weber
[15] asked you about were done in 1994; is that correct?

[16] A: The first two are the same. One is my
[17] information, the other one the actual purchase
[18] order. Yes, that was generated on 3/15/1994 for
[19] 440 East 56th Street.

[20] Q: If you look at the back page of the
[21] exhibit which Mr. Weber did not ask you about, that
[22] appears to be generated on July 12, 1995.

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[1] A: That is correct.

[2] Q: And again, this back page production
[3] number 15666 refers to the same address as the
[4] earlier ones, that is 430-440 East 56th Street; is
[5] that right?

[6] A: That's what it says there.

[7] Q: Do you recall having to order a second
[8] coordination study for this address? In other
[9] words, one in 1994 and other one in 1995?

[10] A: Yes.

[11] Q: So you remember doing that?

[12] A: Same study on--

[13] (Witness confers with counsel.)

[14] A: Since referring to 1994, it was the
[15] request that I made and the path was coordinated by
[16] Comsearch. That was the purchase order. After end
[17] of April, May 1995, when I found out which I
[18] testified they have not cleared the frequency and
[19] sent it out, then I instructed the Comsearch to go
[20] ahead with that and do it.

[21] So as such, I'm not so sure--I don't know
[22] at the moment, did I send them another request or

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[1] Purchasing Department through Comsearch was
[2] requested to send a new purchase order for it.

[3] Q: All right. That's fine. That's what I
[4] was trying to find out, whether or not you remember
[5] making another request to them or not because I
[6] note that there is no handwritten form of the
[7] purchase order as there had been for 1994.

[8] A: For the same reason that I might have not
[9] requested again and looked at what to be the fact
[10] because it was the same thing already done.

[11] Q: So what you think might have happened in
[12] 1995 is that Comsearch would have called Liberty's
[13] Purchasing Department and asked for a purchase
[14] order for that particular job?

[15] MR. BEGLEITER: I will object.
[16] Answer, if you can.

[17] MR. BECKNER: I was trying to clarify what
[18] I thought was his prior testimony.

[19] THE WITNESS: My presumption is since at
[20] some point they did that study in 1995 and they
[21] were supposed to get paid and they did not get paid
[22] under the purchase order was issued at 1994, then

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[1] Purchasing Department decided to issue another one
[2] for them to cover that actual service that they
[3] were supposed to do in 1994, but they didn't, and I
[4] asked them to do it in 1995. That is the answer
[5] for Purchasing Department.

[6] BY MR. BECKNER:

[7] Q: I would like you to take a look at Nourain
[8] Exhibit 2, which is the July 17th, 1995 Form 402.

[9] A: Yes.

[10] Q: I would like you to do a couple of things
[11] for me. First, I think you testified that you had
[12] given the lawyers at Pepper & Corazzini blank Form
[13] 402s, that is, the first two pages of this document
[14] that you had simply signed; is that correct?

[15] MR. BEGLEITER: I'm going to object. I
[16] think that is an incorrect characterization.

[17] BY MR. BECKNER:

[18] Q: Did you have a practice of signing
[19] uncompleted copies of this Form 402 generally in
[20] 1994, 1995?

[21] A: I only signed the second page.

[22] Q: The second page.

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[1] A: The second page was blank for expedited
[2] filing of the FCC.

[3] Q: And so those blank signed forms were at
[4] Pepper & Corazzini's offices; is that correct?

[5] A: That's correct, send them to their office.

[6] Q: And then they would fill in the
[7] information for a particular path application; is
[8] that right?

[9] A: That's incorrect. The first two is
[10] generally constant. It's only the transmitter, and
[11] you will see that on all the paths are the same.

[12] Q: Look at first page of 402 and see what is
[13] the same and what is different. The name and the
[14] mailing address of the applicant, that doesn't
[15] change; is that correct?

[16] A: That's correct.

[17] Q: The name of the person, the contact
[18] regarding the application?

[19] A: Same.

[20] Q: That's one of the lawyers at Pepper &
[21] Corazzini; correct?

[22] A: That's correct.

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[1] Q: And the phone number of the lawyer from
[2] there.

[3] I want to direct your attention, though,
[4] to item 9-B on the form where they have column
[5] headed "path" with the letters A, B, C, D and E
[6] underneath that.

[7] A: Yes.

[8] Q: And action and changed items.
[9] That is different for different forms, is
[10] it not?

[11] A: No. After you establish your original
[12] transmitter site, everything else is the path added
[13] to it, so a receiver would have the same thing, if
[14] you fill out the receiver number A, have the same
[15] form. If you fill out another receiver B, it will
[16] still call add. The only time you don't call add
[17] is just itself another new transmitter to generate.

[18] Q: But in some cases you might add an A and
[19] not a B or not a C, in some cases. In this case
[20] there is an add for A, B, and C. You don't always
[21] add A, B, and C, do you?

[22] A: But the case is A, B, C is the number of

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[1] the receive sites. This particular application it
[2] was three receive sites.
[3] Q: But another application it might be four
[4] receive sites?
[5] A: So you add--you have to cross D as well.
[6] Q: What I'm trying to establish is this
[7] little part of the form is different for different
[8] applications?
[9] A: Yes. That particular part of it has
[10] nothing to do with the actual technical part
[11] information on that.
[12] Q: The bottom half the antenna information,
[13] that's for the transmitter?
[14] A: That's something to do with the--nothing
[15] to do the antenna. This is the location of the
[16] building itself which generally talks about
[17] geographic coordination, the address of the
[18] building, the height of the building, and above
[19] ground. That never changes unless someone
[20] destroyed the building and built it again.
[21] Q: And then the technical information part of
[22] the application which is page two of Form 402, that

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[1] information is attached to the form; is that
[2] correct?
[3] (6:00 p.m.)
[4] A: That is correct.
[5] Q: Let's just go through that we have
[6] Attachment 1, Path A, on this particular exhibit.
[7] A: That's correct.
[8] Q: Does this information change from
[9] application to application, or is this information
[10] on this page always the same?
[11] A: Changes from application to application,
[12] but again has nothing to do with the application.
[13] This is what Comsearch sends out--technical
[14] information that I mentioned that I would review
[15] which would be attached to the applications.
[16] Q: Once you're satisfied this information is
[17] correct the first time, you don't need to look at
[18] it again? Again I'm talking about Attachment 1,
[19] Path A.
[20] A: The information on Attachment Part A is
[21] the information which is transferred from technical
[22] information which is from on Exhibit 2, Path A,

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[1] from page two of 12, three of 12, one of 12. And
[2] those are the information that I would review, and
[3] basically the same data goes to this. That is the
[4] part that just transfers from one site to the other
[5] and doesn't really require my review. It is
[6] standard things that Comsearch will have from the
[7] manufacturer of the equipment.
[8] So I reviewed pages two of 12, three of
[9] 12, pages one of 12 which talk about A path, B C
[10] Path, which is the original I review. Based on
[11] that, I will give them the approval of the
[12] technical part of this application as being
[13] completed.
[14] Q: What you're telling me is the information
[15] on these three pages that you say you reviewed is
[16] repeated, but it's the same information given again
[17] on this Attachment 1, Path A, B, and C, which is
[18] right behind the Form 402?
[19] A: That's correct.
[20] Q: I just want to make sure.
[21] A: It's called supplemental information.
[22] Q: Yes. Now on the Exhibit 2, Path A, Path

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[1] B, and Path C, I think those pages you said you did
[2] review before this application was filed; was that
[3] right? Page two of 12, page three of 12, page one
[4] of 12?
[5] A: Yes.
[6] Q: There is a date that's near the top of
[7] each of the pages of 07/03/95.
[8] Do you know what date that represents?
[9] MR. BEGLEITER: Asked and answered,
[10] Mr. Beckner, but go ahead.
[11] THE WITNESS: That's the date that the
[12] Comsearch will finalize that information. It's a
[13] study.
[14] BY MR. BECKNER:
[15] Q: I apologize if that question has been
[16] asked again. I'm not sure if it had been.
[17] Now, is it that you asked Comsearch to
[18] generate this material sometime before July 3rd,
[19] 1995, in order to file this application? Is that
[20] what you did?
[21] A: I don't understand the question.
[22] Q: Okay. Comsearch--what do you call this?

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[1] A: I called it a PCN.
[2] Q: Fine. I want to use your terms so we are
[3] talking about the same thing.
[4] A: That's fine.
[5] Q: This PCN which is dated July 3rd, 1995,
[6] was that done in response to a request from you?
[7] Did you ask them to do this PCN?
[8] A: The Path C, if you refer to Path C, that
[9] was one of the paths that we were talking about
[10] that was done in 1994, which wasn't sent out. And
[11] after we found out, we asked them to repeat that.
[12] That is that path.
[13] The other two was done by my instruction
[14] provided for them the information. 20 Sutton Place
[15] South.
[16] Q: And I take it you asked them to do these
[17] documents before July 3rd?
[18] A: Yes.
[19] Q: Okay.
[20] A: Must have been done before that because it
[21] takes time for them to study that.
[22] Q: Okay. Do you have any record that would

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[1] tell you on what day you did request Comsearch to
[2] generate these PCNs?
[3] A: I could only guess.
[4] Q: I'm not asking you to guess. If you have
[5] any record, any log book or any purchase order,
[6] anything like that that you would have done as part
[7] of your request to Comsearch to do these PCNs.
[8] (Witness confers with counsel.)
[9] A: Approximate date, two or three weeks
[10] before that.
[11] Q: I want you to turn to the second page
[12] after the last page of the PCN. Turn over four
[13] sheets of paper and you will come to a letter that
[14] has a letterhead that says Comsearch on the top and
[15] underneath that there is a date of July 3rd. You
[16] see that? It's on the Comsearch stationery.
[17] A: Yes, I see that.
[18] Q: And at the top it says "client copy,
[19] please mail to customer," and just above the middle
[20] it says "expedited response requested." Do you see
[21] that? I will make sure we are looking at the same
[22] page.

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(1) A: Yes, I'm reading it. This is correct.
 (2) Q: Does the fact that this apparently was
 (3) prepared as an expedited response help you further
 (4) in knowing approximately when you asked Comsearch
 (5) to do this work?
 (6) MR. BEGLEITER: Object. Form.
 (7) Answer it, if you can.
 (8) MR. BECKNER: I could ask it the standard
 (9) way. I'm not sure he would understand it.
 (10) MR. BEGLEITER: Your question assumes
 (11) something that isn't accurate, but if he could
 (12) answer it, answer it.
 (13) THE WITNESS: Repeat it again.
 (14) BY MR. BECKNER:
 (15) Q: I will break it up into pieces.
 (16) First, on this Comsearch letter, does the
 (17) line "expedited response requested," is that
 (18) something they always put in there, or is that
 (19) something they only put in some of the time, if you
 (20) know?
 (21) A: No. Sometimes they put that when you
 (22) asked to expedite that.

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(1) Q: So because that line appears in this
 (2) particular letter that we are looking at, do you
 (3) believe that you asked them to do an expedited
 (4) response in this particular case?
 (5) A: I presume so, yes.
 (6) Q: Now, do you remember a few questions ago I
 (7) was asking you if you could remember about when you
 (8) made the request of Comsearch to do these PCNs, and
 (9) I think you testified about two or three weeks
 (10) before they were actually done.
 (11) MR. BEGLEITER: Approximately.
 (12) THE WITNESS: Approximately to generally,
 (13) yes.
 (14) BY MR. BECKNER:
 (15) Q: The only thing I'm asking you now is,
 (16) having seen this appears to have been done on an
 (17) expedited-response basis, does that help you
 (18) remember any more detail when you made the request
 (19) for the PCN? Or do you still think it's two or
 (20) three weeks before the work was actually completed?
 (21) A: Since this is an expedited and generally
 (22) customary with expedited basis, probably would be

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(1) about a week to ten days. So if I wanted to change
 (2) that two, three weeks, I would say a few days
 (3) earlier due to the fact this was expedited.
 (4) BY MR. BECKNER:
 (5) Q: I think I'm done with Nourain Exhibit 2.
 (6) There is another part of your testimony in
 (7) response to Mr. Weber's questions that I'm not
 (8) clear about, and again I will admit that I wasn't
 (9) here for every moment, so if I ask what's already
 (10) been asked may be a result of that.
 (11) My understanding from what your answers
 (12) were is that the way the process worked in 1994 and
 (13) with the applications is that you would order a
 (14) coordination or PCN for the path that you wanted to
 (15) have licensed from Comsearch; correct? That would
 (16) be step one?
 (17) A: Step one was to do the site survey.
 (18) Q: But Liberty had made a contract with a
 (19) particular building and it wanted to serve that
 (20) building with a microwave path, and Tony Ontiveros
 (21) or somebody said let's begin to do what you need to
 (22) do to serve this building with the microwave path.

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(1) And you knew that every new microwave path had to
 (2) have an FCC license; correct?
 (3) A: That's correct.
 (4) Q: So you would start the process of getting
 (5) that license by requesting from Comsearch a
 (6) frequency coordination for that particular path to
 (7) that building; correct?
 (8) A: Yes.
 (9) MR. BEGLEITER: Note my objection. You
 (10) already answered it.
 (11) THE WITNESS: I asked them to do the
 (12) frequency coordination and study.
 (13) MR. BECKNER: I understand, Counsel, I
 (14) have already heard some of this, but frankly it
 (15) would be easier for the witness if I started at
 (16) beginning instead of jumping in the middle.
 (17) MR. BEGLEITER: That objection is he
 (18) explained earlier that the process begins before
 (19) the contract is signed, so that's why your question
 (20) had a premise that it was after the contract is
 (21) signed. I don't think it's material to what you're
 (22) getting at, but to be accurate—I want to be

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(1) accurate.
 (2) MR. BECKNER: That's fine.
 (3) BY MR. BECKNER:
 (4) Q: And then, I take it, what would happen is
 (5) the Comsearch would send back to you, I think, what
 (6) you called the PCN?
 (7) A: That's right.
 (8) Q: They would send it to you on the fax
 (9) machine?
 (10) A: That's correct.
 (11) Q: You would look at it, you would check the
 (12) technical information on it to make sure that it
 (13) appeared to you to be correct.
 (14) A: Correct.
 (15) Q: And then would you telephone them and say
 (16) the information is correct? Is that how?
 (17) A: As I testified before, yes. I worked
 (18) after it was happening. I would call them and
 (19) after we talked over the phone on it, I would say
 (20) everything is corrected, and send those PCN for
 (21) coordination and send a copy to Pepper & Corazzini.
 (22) Q: Right. And also at about the time you

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(1) requested the coordination from Comsearch, you
 (2) advised Pepper & Corazzini that they need to
 (3) prepare an application for that path?
 (4) A: During that process that Comsearch was
 (5) studying, Pepper & Corazzini were informed that
 (6) they expect the information from Comsearch and
 (7) proceed with their completion of the FCC filing.
 (8) Q: What I want to know is you said earlier
 (9) informed. Who informed them? That is, Pepper &
 (10) Corazzini. Did you do that, or did Comsearch do
 (11) that?
 (12) A: At some point I will inform them that the
 (13) path is coming certain times, and then Comsearch
 (14) automatically send information to them after I
 (15) checked that—checked the technical aspects of it
 (16) and satisfied that it's correct.
 (17) Q: Then after those things happened, would
 (18) you customarily have any further communication with
 (19) the Pepper & Corazzini firm about that application
 (20) that you had started?
 (21) A: The customary was that it was understood
 (22) that he—at that point I will get involved into the

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(1) building the system, and the legal part of it is in
(2) their hand, and Comsearch and Pepper & Corazzini,
(3) and Pepper & Corazzini's instruction was to proceed
(4) with filing-applying for the STA and obtain the
(5) authorization, and I would proceed with a lot of
(6) engineering and numerous things that I was tasked
(7) to do. That was a legal part of it which I stated
(8) this morning that I wouldn't get involved with.

(9) Q: But as a general practice, after telling
(10) Pepper & Corazzini to expect the material from
(11) Comsearch and to go ahead and prepare an
(12) application for this new path, then you would not
(13) typically speak with them anymore about that new
(14) path?

(15) A: That's correct.

(16) Q: And you assumed that they would go ahead
(17) and file the application and the request for STA
(18) without hearing anything more from you?

(19) A: And obtain the authorization of it, that's
(20) correct.

(21) Q: As a regular practice in 1994, did anyone
(22) at Pepper & Corazzini then call or write back to

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(1) you to say, all right, Mr. Nourain, the application
(2) for a particular path has been granted by the FCC,
(3) or the STA request for a particular path has been
(4) granted by the FCC?

(5) MR. BEGLEITER: Objection. Lack of
(6) foundation.

(7) Answer, if you can.

(8) THE WITNESS: I don't recall. We talked a
(9) lot with Pepper & Corazzini about a lot of
(10) application and a lot of STAs.

(11) BY MR. BECKNER:

(12) Q: I'm not sure my question was clear. Let
(13) me just try a little bit different way.

(14) We have been talking about your regular
(15) customary practice for filing applications for new
(16) microwave paths, and what you did and what the law
(17) firm did and what Comsearch did.

(18) Now, what I want to do again, without
(19) speaking of a specific building in mind, but just a
(20) regular practice, is to find out whether or not as
(21) a regular practice someone from Pepper & Corazzini
(22) would inform you that an application had been

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(1) granted or an STA requested and granted.

(2) Was that part of the regular process that
(3) they would call you or wrote you back and say this
(4) application has been granted?

(5) A: The regular process was that all these
(6) things were understood, that they were filing the
(7) application, they going and getting us the grant.

(8) The STA grant, I assume, is four months
(9) and after four months be renewed, and I might
(10) receive the other STA grant which would be renewal
(11) of one before as well as the one was already
(12) applied for and granted.

(13) So those are the communication I had with
(14) Pepper & Corazzini, but they were--their job was to
(15) legally make sure that they keep continuing what
(16) they were doing.

(17) Q: Tell me if I'm wrong, but I understood
(18) from your earlier testimony that you assumed that I
(19) think the number was 60 days, a certain number of
(20) days after an application had been filed or an STA
(21) request had been filed that it would be granted as
(22) a general practice; is that right?

(1) MR. BEGLEITER: Objection.

(2) BY MR. BECKNER:

(3) Q: Please say yes or no.

(4) A: What you say is not true.

(5) Q: Once you had given the instructions to
(6) Comsearch to go ahead and forward their
(7) frequency-send frequency coordination to Pepper &
(8) Corazzini so Pepper & Corazzini could file an
(9) application for a particular path, how did you know
(10) when you could turn that path on, activate it?

(11) A: After I had Comsearch coordinate and have
(12) the PCN reviewed by them, understanding is--Pepper
(13) & Corazzini that they ought to immediately proceed
(14) during the time that Comsearch coordination was
(15) going out, whether it was 20 days or 30 days, they
(16) were to prepare that application and have that
(17) ready as soon as the supplemental would come back
(18) with the STA and file that right away. And then my
(19) presumption was that after a few days they would
(20) get a grant of the STA, and then we will go ahead
(21) and proceed with turning the system on.

(22) Q: Now, just to make clear, you understood in

(1) 1994, did you not, that just the fact that an
(2) application or an STA request had been filed with
(3) the FCC, that fact alone did not give the person
(4) who filed the application permission to turn on the
(5) microwave path that was the subject of the
(6) application? In other words, you couldn't simply
(7) just file an application and turn on the microwave
(8) path; you understood that?

(9) A: That is a general understanding. You have
(10) to be authorized to be able to turn on the system.
(11) And during that process, my presumption was that
(12) everything was done by the lawyers. My job was to
(13) finish my technical work, have the counsel follow
(14) that up, and we proceeded with building the system.

(15) Q: And I take it from your answer that you
(16) would not wait before turning on a system to
(17) actually get communication from the lawyers to tell
(18) you that an application had been granted or an STA
(19) request had been granted, that you simply assumed
(20) that after a few days from when it was filed that
(21) it would have been granted?

(22) MR. BEGLEITER: I will object to the form

(1) of the question.

(2) Answer it, if you can.

(3) THE WITNESS: I can't answer the question
(4) just like that. You have to be a little specific.

(5) I can answer this way, that there is a
(6) certain time that I knew has to go through that
(7) process, and when I turned the system on, was
(8) assured that that process is taking place and
(9) you're authorized. Whether it was--that's the
(10) process that I went in there to answer. That is, I
(11) didn't the next day turn the system on after
(12) Comsearch coordinated. There is a certain process
(13) that I let that elapsed to do that or I did not get
(14) the actual authorization from the counsel, but I
(15) was sure--my presumption was be sure that we have
(16) passed certain time that we could turn the system
(17) on.

(18) BY MR. BECKNER:

(19) Q: So, if I got this right, you waited a
(20) certain amount of time before turning the system
(21) on, and you assumed that if you waited that amount
(22) of time, then the application or the STA request

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[1] for that system would have been granted?
 [2] A: My presumption that always there is a
 [3] certain time that thing has to be done before you
 [4] turn it on, and those times would be all lapsed or
 [5] that time was done would be done, and then I will
 [6] turn the system on at that point.

[7] Q: Would you please take a look at Foy
 [8] Exhibit 32. I want you to just take a look at the
 [9] first page of Foy Exhibit 32 which is called
 [10] Appendix A.

[11] A: Yes.

[12] Q: You will note that there are various
 [13] receiver locations in one column and there is a
 [14] date that the FCC received an application for that
 [15] microwave path to the indicated location, and there
 [16] is a date that Liberty actually commenced service
 [17] at that location.

[18] I want to direct your attention first to
 [19] the top of the list of the address given here is 35
 [20] West End Avenue.

[21] A: Yes.

[22] Q: And the license application date is

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[1] December 22nd, 1994, and the beginning of service
 [2] is January 3rd, 1995, which is 12 days later.

[3] What I would like to know is, is 12 days
 [4] the typical amount of time that you would wait to
 [5] turn on a system after an application had been
 [6] filed? Or is that more or less the typical?

[7] A: No, you are mistaken. License apply at
 [8] that point. I'm talking about when I was clearing
 [9] that frequency at certain date with Comsearch.
 [10] Then there was between the Comsearch and Pepper &
 [11] Corazzini to get the application and send
 [12] information out. So that date is the date of the
 [13] applications.

[14] Q: Then what you're saying is that the work
 [15] you did with Comsearch in this particular example
 [16] that I have chosen was done sometime before
 [17] December 27?

[18] A: I'm not saying that. I'm saying you are
 [19] referring that was 12 days after I started, this
 [20] happened, I'm telling you no because this is the
 [21] date of the application.

[22] Q: And whatever you did was before the

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[1] application; correct?

[2] A: Yes. My work was working with the
 [3] Comsearch, yes.

[4] Q: I'm not asking you how many days before,
 [5] but it was before the application; correct?

[6] A: You did the coordination and then you file
 [7] the application.

[8] Q: Did the Pepper & Corazzini firm advise you
 [9] as to the particular date they actually filed an
 [10] application after you had requested one?

[11] A: It wasn't advised me by Pepper &
 [12] Corazzini. Pepper & Corazzini had instruction to
 [13] as soon as the coordination was done, just go ahead
 [14] and apply for every application.

[15] Q: But when they filed an application, they
 [16] didn't tell you--again, using this as an
 [17] example--okay, Mr. Nourain, on December 22nd, we
 [18] filed the application for the path to 35 West End
 [19] Avenue?

[20] A: No.

[21] Q: That would not have been something they
 [22] would ordinarily have done?

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[1] A: No.

[2] (Nourain Exhibit No. 8 was
 [3] marked for identification.)

[4] Q: Just for the record, Mr. Nourain, the
 [5] Court Reporter has handed you a one-page document
 [6] that has been marked as Exhibit 8 to your
 [7] deposition, and it has production number 15653 at
 [8] the bottom. It appears to be a purchase order.

[9] A: Yes, this is the purchase order, yes.

[10] Q: I note that the purchase order is dated
 [11] December 5, 1994; is that right?

[12] A: That's correct.

[13] Q: Would that be the date that you requested
 [14] the frequency coordination that's referred to in
 [15] this particular document?

[16] A: That's not true, no.

[17] Q: Would the date of the order have
 [18] any--strike that.

[19] Would you have requested the frequency
 [20] coordination sometime before December 5th, 1994?

[21] A: I presume, yes, because it takes some time
 [22] for this to be generated by the Purchasing

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[1] Department.

[2] Q: Okay. I would like you to look again at
 [3] Exhibit 32 to Mr. Foy's deposition. You will note
 [4] that Exhibit 8 to your deposition refers to a path
 [5] to 639 West End Avenue, which is the second one on
 [6] the list there.

[7] A: Yes.

[8] Q: Which has an application date of December
 [9] 22, 1994. And it has a service activation of
 [10] January 14, 1995?

[11] A: February 14.

[12] Q: I'm sorry. February 14, 1995.
 [13] Between February 14, 1995, and December
 [14] 5th, 1994, does that appear to you to be a more
 [15] typical length of time that you would have waited
 [16] to turn on a microwave path for which you had
 [17] applied?

[18] A: I can't answer that because it just
 [19] varies. It varies too much.

[20] Q: Now, in the questions that I have asked
 [21] you about your regular practice in 1994 for
 [22] applying for microwave licenses and turning on new

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[1] microwave paths to buildings, I have always said--I
 [2] specified the year 1994.

[3] Now what I would like you to tell me is
 [4] whether or not from the time you began work as a
 [5] regular employee of Liberty as opposed to as a
 [6] consultant, is that the practice that you followed
 [7] with respect to applying for or starting a license
 [8] application and turning on a building, or was it
 [9] different earlier than 1994? Did you do things
 [10] differently?

[11] A: As I stated this morning, my job was to do
 [12] the technical part of it, and it stopped after I
 [13] got their frequency coordination cleared by
 [14] Comsearch.

[15] From there on, there were other
 [16] people--there were lawyers in Washington, Pepper &
 [17] Corazzini, they were the ones who were supposed to
 [18] do the legal part of it, and proceed with on a
 [19] timely fashion to get the applications, get the
 [20] Special Temporary Authority which was required and
 [21] within that time. And I was working with the
 [22] technical part of the house. That was a counsel's

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[1] job to do that.

[2] Q: Now, the procedure that you followed
[3] changed sometime in 1995; is that correct?

[4] A: It changed sometime in 1995, yes.

[5] Q: And under the new procedure you have to
[6] get permission from Mr. Berkman, is it, to activate
[7] a new microwave path before you do it?

[8] A: Yes. The procedure changed to better
[9] control the legal part of the whole process, and
[10] that required that other people get involved in it,
[11] making sure that other legal aspect of it is done.
[12] Namely, Mr. Berkman was involved in that.

[13] Q: During the year 1994 when you were
[14] following the procedure that you described, were
[15] other people who worked with you at Liberty aware
[16] of how you were doing things as far as you know?

[17] A: Rephrase the question. I don't
[18] understand, how I'm doing things. That's a broad
[19] question.

[20] Q: Were they aware of the procedures that you
[21] were following with respect to initiating microwave
[22] path applications and deciding when to turn on a

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[1] new microwave path?

[2] MR. BEGLEITER: Objection to the form of
[3] the question.

[4] Answer, if you can.

[5] THE WITNESS: The only thing I can answer
[6] is I was the one who later continued the procedure
[7] continued from before. I do the technical part of
[8] it, and all I did was facilitate for the legal part
[9] to be done, again repeating Pepper & Corazzini and
[10] Comsearch that. So that is my answer to that
[11] question, unless you be very specific.

[12] Q: Was Tony Ontiveros—he was your boss;
[13] correct?

[14] A: I was reporting to him, yes.

[15] Q: Was he aware of the way in which you were
[16] doing the microwave application and the activation
[17] of new microwave paths in 1994, to your knowledge?

[18] A: He was—the procedure that I laid on that
[19] it was to—repeat the question again.

[20] MR. BEGLEITER: I have an objection to
[21] that question.

[22] THE WITNESS: One part of it.

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[1] MR. BECKNER: The witness seems to be
[2] having trouble with the question. I will do that.

[3] MR. BEGLEITER: I want my objection noted
[4] to the question.

[5] MR. BECKNER: The question is withdrawn.

[6] MR. BEGLEITER: Fine.

[7] BY MR. BECKNER:

[8] Q: During 1994, about how often did you see
[9] Mr. Ontiveros at work?

[10] A: Our offices were next to each other, so we
[11] periodically see each other.

[12] Q: Would you say that you probably would see
[13] each other everyday that you were at work? I don't
[14] mean necessarily having a meeting, but simply see
[15] each other.

[16] A: I would say that's correct.

[17] Q: Do you generally keep Mr. Ontiveros
[18] advised as to what you were doing while you were
[19] doing it?

[20] A: You need to be specific. Advise? What
[21] you mean?

[22] Q: Well, did you advise him, for example,

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[1] that you were going to or had ordered a Comsearch
[2] study for new microwave path? Is that a typical
[3] thing?

[4] A: No, that is not true. Most of
[5] my—everything was very general with Mr. Ontiveros.
[6] We went over the buildings and various things, but
[7] to generally answer your question, I was doing very
[8] independent work. I was not just ask a question
[9] every minute I was going to do so. Other than that
[10] you have to be specific.

[11] Q: Did Mr. Ontiveros occasionally ask you
[12] about what you were doing, just in general?

[13] A: Mr. Ontiveros knew generally what I had
[14] been doing because we were having periodic meetings
[15] on the projects. My statement, maybe you
[16] misunderstood that. We were not going into detail
[17] of everything like what I'm buying or how I'm going
[18] to design the system. Those technical details we
[19] were not, but overall the Scope of Work we will
[20] discuss about the projects, how the frequent
[21] project is going, so on and so forth.

[22] Q: Do you remember at any time during 1994 or

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[1] the first three months of 1995, anybody at Liberty
[2] ever asking you before you turned on or had someone
[3] turn on a new microwave path, Mr. Nourain, do we
[4] have a license to operate this path, do we have a
[5] grant of authority to run this path? Was that
[6] question ever put to you by anyone at Liberty?

[7] A: No.

[8] MR. BECKNER: Off the record for a second.
[9] (Brief recess from 6:25 p.m. to 6:30 p.m.)

[10] BY MR. BECKNER:

[11] Q: I want you just to pick up again, if you
[12] will, Exhibit 5 to your deposition, Mr. Nourain.
[13] It's the paper that says "FCC Pleading Response to
[14] Surreply," and it has your affidavit, the copy of
[15] your affidavit. If you would turn to the copy of
[16] your affidavit that's on the back of the document.

[17] A: Yes.

[18] Q: Page three of the affidavit, paragraph
[19] five, which I know you have already examined on,
[20] the one that says, "I'm advised Time Warner had
[21] opposed Liberty's application." Do you see that?

[22] A: Yes, I see that.

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[1] Q: Did Mr. McNaughton or anybody else show
[2] you any document or any paper that was an
[3] opposition, or did they simply just tell you this
[4] is what's happened?

[5] MR. BEGLEITER: I object to the form of
[6] the question.

[7] Answer, if you can.

[8] THE WITNESS: What do you mean this thing
[9] happened?

[10] BY MR. BECKNER:

[11] Q: Your affidavit says I'm advised
[12] Liberty—I'm advised that Time Warner has opposed
[13] Liberty's pending application, et cetera, and what
[14] I want to know is whether or not—and I think you
[15] testified earlier that you obtained this
[16] information from Jim McNaughton.

[17] A: Yes. And I also stated that that was my
[18] understanding was only for the buildings, which was
[19] interconnected.

[20] Q: I'm not asking you about that yet. Right
[21] now I want to focus on whether Mr. McNaughton, when
[22] he advised you or informed you, did he simply tell